

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAGIT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CITY OF ANACORTES, a Municipal  
Corporation,

Defendant.

NO. 20761

CONSENT DECREE

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	3
II.	JURISDICTION .....	4
III.	PARTIES BOUND .....	5
IV.	DEFINITIONS .....	5
V.	FINDINGS OF FACT .....	6
VI.	WORK TO BE PERFORMED.....	9
VII.	DESIGNATED PROJECT COORDINATORS.....	11
VIII.	PERFORMANCE.....	12
IX.	ACCESS .....	13
X.	SAMPLING, DATA SUBMITTAL, AND AVAILABILITY .....	15
XI.	RETENTION OF RECORDS .....	15
XII.	TRANSFER OF INTEREST IN PROPERTY .....	16
XIII.	RESOLUTION OF DISPUTES .....	17
XIV.	AMENDMENT OF DECREE.....	19
XV.	EXTENSION OF SCHEDULE.....	19
XVI.	ENDANGERMENT .....	21

XVII.	COVENANT NOT TO SUE .....	21
XVIII.	CONTRIBUTION PROTECTION .....	23
XIX.	INDEMNIFICATION .....	23
XX.	COMPLIANCE WITH APPLICABLE LAWS .....	23
XXI.	REMEDIAL ACTION COSTS .....	25
XXII.	IMPLEMENTATION OF REMEDIAL ACTION.....	26
XXIII.	PUBLIC PARTICIPATION.....	26
XXIV.	DURATION OF DECREE.....	28
XXV.	CLAIMS AGAINST THE STATE .....	28
XXVI.	EFFECTIVE DATE.....	28
XXVII.	WITHDRAWAL OF CONSENT.....	29

EXHIBIT A            Site Diagram

EXHIBIT B            Cleanup Action Plan

EXHIBIT C            Scope of Work and Schedule

EXHIBIT D            Ecology Authorized Representatives Approved For Site Access  
with 24 Hours' Notice

EXHIBIT E            Applicable Permits

EXHIBIT F            Applicable or Relevant and Appropriate Requirements

## I. INTRODUCTION

1. The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Anacortes (Defendant) under this Decree is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires Defendant to perform a final cleanup of the Anacortes Former Water Treatment Plant Cleanup Site ("Site" as defined in Section IV, paragraph 1.A below) in Mount Vernon, Washington. The final cleanup includes source control through remediation of materials containing polychlorinated biphenyls ("PCBs") associated with the Sedimentation and Filtration Basins, excavation and disposal of contaminated soils, and sampling to confirm that the cleanup achieves compliance with established cleanup levels for the Site.

2. Ecology has determined that these actions are necessary to protect human health and the environment.

3. The Complaint in this action is being filed simultaneously with this Decree. An Answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the Parties agree that settlement of these matters without litigation is reasonable and in the public interest, and that entry of this Decree is the most appropriate means of resolving these matters.

4. By signing this Decree, the Parties agree to its entry and agree to be bound by its terms.

5. By entering into this Decree, the Parties do not intend to discharge non-settling parties from any liability they may have with respect to matters alleged in the Complaint. The Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Decree.

6. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts;

1 provided, however, that Defendant shall not challenge the authority of the Attorney General and  
2 Ecology to enforce this Decree.

3 7. The Court is fully advised of the reasons for entry of this Decree, and good cause  
4 having been shown:

5 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

## 6 II. JURISDICTION

7 1. This Court has jurisdiction over the subject matter and over the Parties pursuant  
8 to the Model Toxics Control Act (MTCA), RCW 70A.305.

9 2. Authority is conferred upon the Washington State Attorney General by  
10 RCW 70A.305.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,  
11 after public notice and any required hearing, Ecology finds the proposed settlement would lead  
12 to a more expeditious cleanup of hazardous substances. RCW 70A.305.040(4)(b) requires that  
13 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

14 3. Ecology has determined that a release or threatened release of hazardous  
15 substances has occurred at the Site that is the subject of this Decree.

16 4. Ecology has given notice to Defendant of Ecology's determination that  
17 Defendant is a PLP for the Site, as required by RCW 70A.305.020(26) and WAC 173-340-500.

18 5. The actions to be taken pursuant to this Decree are necessary to protect public  
19 health and the environment.

20 6. This Decree has been subject to public notice and comment.

21 7. Ecology finds that this Decree will lead to a more expeditious cleanup of  
22 hazardous substances at the Site in compliance with the cleanup standards established under  
23 RCW 70A.305.030(2)(e) and WAC 173-340.

24 8. Defendant has agreed to undertake the actions specified in this Decree and  
25 consents to the entry of this Decree under MTCA.

### III. PARTIES BOUND

This Decree shall apply to and be binding upon the Parties to this Decree, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such party to comply with this Decree. Defendant agrees to undertake all actions required by the terms and conditions of this Decree. No change in ownership or corporate status shall alter Defendant's responsibility under this Decree. Defendant shall provide a copy of this Decree to all agents, contractors, and subcontractors retained to perform work required by this Decree, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Decree.

### IV. DEFINITIONS

1. Unless otherwise specified herein, all definitions in RCW 70A.305.020 and WAC 173-340 shall control the meanings of the terms in this Decree.

A. Site: The Site is referred to as the Anacortes Former Water Treatment Plant Cleanup Site ("Site") (Cleanup Site ID: 13264; Facility Site ID: 79423677). The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. The Site consists of the Sedimentation Basin and Filtration Basin and the shallow soils immediately surrounding them in which polychlorinated biphenyls ("PCBs") have been detected.

B. Former Anacortes Water Treatment Plant: The Former Water Treatment Plant was constructed on the property between 1969 and 1970 and decommissioned in 2013. It consists of an Administration Building, Clear Well, Waste Well, Filtration Basin, and Sedimentation Basin.

C. New Anacortes Water Treatment Plant: Refers to the water treatment plant that was constructed on the Property beginning in 2011 and was brought online in

1 2013 to replace the Former Water Treatment Plant, which currently serves the City's  
2 municipal water storage and distribution network.

3 D. Property: Refers to the real property located at 14489 River Bend Road in  
4 Mt. Vernon, Washington (Skagit County Parcel No. P21669).

5 E. Consent Decree or Decree: Refers to this Consent Decree and each of the  
6 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent  
7 Decree.

8 F. Defendant: Refers to the City of Anacortes.

9 G. Parties: Refers to the State of Washington, Department of Ecology and  
10 Defendant.

## 11 V. FINDINGS OF FACT

12 1. Ecology makes the following findings of fact without any express or implied  
13 admissions of such facts by Defendant.

14 A. Based upon factors currently known to Ecology, the Site is generally  
15 located at 14489 River Bend Road in Mt. Vernon, Washington, Latitude: 48.43607 and  
16 Longitude: -122.37020. The Site includes the Sedimentation Basin and Filtration Basin  
17 and the shallow soils immediately surrounding them in which polychlorinated biphenyls  
18 (PCBs) have been detected. *See* Exhibit A.

19 B. The Property is owned by the City of Anacortes, and the new water  
20 treatment facility is operated by the City of Anacortes Public Works Department.

21 C. Between 1969 and 1970, the Former Anacortes Water Treatment Plant  
22 was constructed on the Property to treat water from the Skagit River prior to transfer to  
23 the City's municipal water storage and distribution network. The Former Anacortes  
24 Water Treatment Plant consists of an Administration Building, Clear Well, Waste Well,  
25 Filtration Basin, and Sedimentation Basin. The Remedial Investigation Report accepted  
26 by Ecology indicates that the Administration Building, Clear Well, and Waste Well have

1 not had a release and do not present a threat of release of PCBs to the environment (e.g.,  
2 soil, groundwater) and, therefore, Ecology has determined that these structures are not  
3 part of the Site. Refractory materials generated during the demolition of the  
4 Administration Building may be beneficially used as fill to restore remediated areas of  
5 the Site.

6 D. The Former Anacortes Water Treatment Plant was decommissioned in  
7 2013, when the New Anacortes Water Treatment Plant that currently serves the City's  
8 municipal water storage and distribution network became active. The Former Water  
9 Treatment Plant remains on the Property, but has not been utilized for water treatment,  
10 filtration, or distribution since it was decommissioned in 2013. The Administration  
11 Building is no longer in active use for any purpose.

12 E. Access to the New Anacortes Water Treatment Plant and the Former  
13 Anacortes Water Treatment Plant is restricted to employees and approved visitors by a  
14 locked fence with access controlled vehicle gates to prevent unpermitted access.

15 F. In January 2015, DLH Environmental Consulting conducted a Hazardous  
16 Materials Assessment and detected PCBs at concentrations exceeding MTCA Method A  
17 cleanup levels in a single shallow soil sample taken at the base of the exterior wall of the  
18 Sedimentation Basin.

19 G. Following the 2015 Hazardous Materials Assessment, characterization of  
20 the nature and extent of PCB contamination at the Site was undertaken in two phases.  
21 The first phase focused on building construction materials in order to define the source  
22 and distribution of PCBs identified in the Hazardous Materials Assessment. The second  
23 phase involved testing 32 soil samples and 16 groundwater samples for PCBs. The results  
24 of both investigation phases were presented in a Remedial Investigation/Feasibility Study  
25 (RI/FS) Report approved by Ecology on July 7, 2020.  
26

1 H. As outlined in the RI/FS, PCBs were detected above the MTCA  
2 Method A Soil Cleanup Level of 1 mg/kg in 7 soil samples taken along the northern half  
3 of the eastern side of the Sedimentation Basin and the south and east sides of the Filtration  
4 Basin. PCBs were detected in shallow soils immediately adjacent to the structures  
5 between 0 to 12 inches below ground surface. PCBs were not detected in groundwater  
6 sampling conducted as part of the remedial investigation.

7 I. As part of the planned demolition of the Former Water Treatment Plant,  
8 a hazardous materials assessment was conducted in 2015. Samples collected from  
9 building materials as part of the assessment found PCBs in an industrial coating layer on  
10 the above-ground exterior walls of the Sedimentation Basin and Filtration Basin.

11 J. In March 2017, Intertox, Inc., on behalf of the City, conducted an  
12 Evaluation of Potential Human Health Risks Associated with Contamination Identified  
13 in Building Materials at the Anacortes Former Water Treatment Plant, which determined  
14 that no adverse health effects are likely to have occurred to customers, workers, or  
15 trespassers at the Anacortes Former Water Treatment Plant. This report was not required  
16 by Ecology for this Site and has not been reviewed by Ecology as part of the formal  
17 cleanup process. The City and Ecology entered into Agreed Order No. DE 16576 for the  
18 Anacortes Former Water Treatment Plant Cleanup Site, effective August 28, 2019  
19 (Agreed Order).

20 K. Under the schedule in the Agreed Order, Defendant submitted to Ecology  
21 a Public Review Draft of the Remedial Investigation Report dated March 11, 2019.  
22 Defendant also submitted to Ecology a Public Review Draft of the Feasibility Study dated  
23 February 26, 2020;

24 L. On March 23, 2020, in consideration of public health and safety in light  
25 of the current pandemic, Ecology held an online public meeting to accept public  
26



comment on the Public Review Drafts of the Remedial Investigation and Feasibility Study reports.

M. Ecology received one public comment in response to the Public Review Drafts of the Remedial Investigation and Feasibility Study reports. In May 2020, Ecology issued its Response to Comments for the Remedial Investigation and Feasibility Study for the Site.

N. Defendant submitted the final Remedial Investigation (RI) and Feasibility Study (FS) reports to Ecology on May 26, 2020. Ecology formally accepted the RI and FS reports as final on July 7, 2020.

O. Defendant provided a Draft Cleanup Action Plan to Ecology on October 1, 2020 for review. Ecology will issue the Final Cleanup Action Plan after the public comment period is completed and comments have been reviewed and considered. The final Cleanup Action Plan (CAP) is attached as Exhibit B to this Decree.

P. Ecology has assigned the Site an overall priority ranking of 5 – Lowest Assessed Risk pursuant to MTCA.

Q. As documented in the Cleanup Action Plan (CAP) (Exhibit B), Ecology has chosen a final cleanup action to be implemented at the Site.

## **VI. WORK TO BE PERFORMED**

1. This Decree contains a program designed to protect human health and the environment from the known release, or threatened release, of hazardous substances or contaminants at, on, or from the Site. All remedial action(s) conducted by Defendant at the Site shall be done in accordance with WAC 173-340.

2. The Defendant shall implement the CAP (Exhibit B) in accordance with the Scope of Work and Schedule attached to this Decree (Exhibit C). Among other remedial actions, the CAP requires Defendant to complete source control through the remediation of materials containing PCBs associated with the former Sedimentation Basin and Filtration Basin and

1 complete soil remediation through excavation and off-Site disposal of PCB-contaminated soils  
2 that are above the Site cleanup level. Performance monitoring will be used to verify that cleanup  
3 standards are met by the remedial actions.

4 3. All plans or other deliverables submitted by Defendant for Ecology's review and  
5 approval under the CAP (Exhibit B) or Scope of Work and Schedule (Exhibit C) shall, upon  
6 Ecology's approval, become integral and enforceable parts of this Decree.

7 4. If Defendant learns of a significant change in conditions at the Site, including but  
8 not limited to, a statistically significant increase in contaminant and/or chemical concentrations  
9 in the soil, Defendant, within seven (7) days of learning of the change in condition, shall notify  
10 Ecology in writing of said change and provide Ecology with any reports or records (including  
11 laboratory analyses and sampling results) relating to the change in conditions.

12 5. Unless otherwise directed by Ecology, Defendant shall submit to Ecology written  
13 quarterly Progress Reports that describe the actions taken during the previous three (3) months  
14 to implement the requirements of this Decree. All Progress Reports shall be submitted by the  
15 fifteenth (15th) day of the month in which they are due after the effective date of this Decree.  
16 Unless otherwise specified in writing by Ecology, Progress Reports and any other documents  
17 submitted pursuant to this Decree shall be sent by email to Ecology's project coordinator. The  
18 Progress Reports shall include the following:

19 A. A list of on-site activities that have taken place during the previous  
20 quarter.

21 B. Description of any sample results which deviate from the norm.

22 C. Detailed description of any deviations from required tasks not otherwise  
23 documented in project plans or amendment requests.

24 D. Description of all deviations from the Scope of Work and Schedule  
25 (Exhibit C) during the prior quarter and any planned deviations in the upcoming month.  
26

1 E. For any deviations in schedule, a plan for recovering lost time and  
2 maintaining compliance with the schedule.

3 F. All final, validated data (including laboratory analyses) received during  
4 the previous quarter (if not previously submitted to Ecology), together with a detailed  
5 description of the underlying samples collected.

6 G. A list of planned activities for the upcoming quarter.

7 6. Except in the case of an emergency, Defendant agrees not to perform any  
8 remedial actions at the Site outside the scope of this Decree without prior written approval of  
9 Ecology. In the case of an emergency, Defendant must notify Ecology of the event and remedial  
10 action(s) as soon as practical, but no later than twenty-four (24) hours after discovery of the  
11 emergency.

12 **VII. DESIGNATED PROJECT COORDINATORS**

13 1. The project coordinator for Ecology is:

14 Cris Matthews  
15 Ecology Site Manager  
16 913 Squalicum Way, Suite 101  
17 Bellingham, WA 98225  
18 360-255-4379  
19 *cris.matthews@ecy.wa.gov*

20 2. The project coordinator for Defendant is:

21 Fred Buckenmeyer  
22 Director of Public Works  
23 City of Anacortes Public Works  
24 P.O. Box 547  
25 Anacortes, WA 98221  
26 360-293-1919  
*fredb@cityofanacortes.org*

Copies of any communication or documents sent to the project coordinator for the City  
must also be sent to:

1 Darcy Swetnam  
2 City Attorney  
3 City of Anacortes  
4 P.O. Box 547  
5 Anacortes, WA 98221  
6 360-299-1950  
7 [darcys@cityofanacortes.org](mailto:darcys@cityofanacortes.org)

8 Jacquie Quarré  
9 McCullough Hill Leary, PS  
10 701 5<sup>th</sup> Avenue, Suite 6600  
11 Seattle, WA 98104  
12 206-812-6961  
13 [jquarre@mhseattle.com](mailto:jquarre@mhseattle.com)

14 3. Each project coordinator shall be responsible for overseeing the implementation  
15 of this Decree. Ecology's project coordinator will be Ecology's designated representative for the  
16 Site. To the maximum extent possible, communications between Ecology and Defendant and all  
17 documents, including reports, approvals, and other correspondence concerning the activities  
18 performed pursuant to the terms and conditions of this Decree shall be directed through the  
19 project coordinators. The project coordinators may designate, in writing, working level staff  
20 contacts for all or portions of the implementation of the work to be performed required by this  
21 Decree.

22 4. Any party may change its respective project coordinator. Written notification  
23 shall be given to the other party at least ten (10) calendar days prior to the change.

## 24 **VIII. PERFORMANCE**

25 1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and  
26 hydrogeologic work performed pursuant to this Decree shall be under the supervision and  
direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct  
supervision of an engineer registered by the State of Washington.

2. Except as otherwise provided for by RCW 18.43.130, all engineering work  
performed pursuant to this Decree shall be under the direct supervision of a professional engineer  
registered by the State of Washington.

3. Except as otherwise provided for by RCW 18.43.130, all construction work performed pursuant to this Decree shall be under the direct supervision of a professional engineer registered by the State of Washington or a qualified technician under the direct supervision of a professional engineer registered by the State of Washington.

4. As required by RCW 18.43 and 18.220, any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional.

5. Defendant shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Decree, in advance of their involvement at the Site.

## IX. ACCESS

1. In accordance with the notification procedures set forth below in subsection 4, Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that Defendant either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Decree; reviewing Defendant's progress in carrying out the terms of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Decree; and verifying the data submitted to Ecology by Defendant.

2. Nothing in this Decree is intended by the Defendant to waive any right it may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If Defendant withholds any requested records based on an assertion of privilege, it shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Decree shall be considered privileged.

1           3.       Defendant shall make all reasonable efforts to secure access rights for those  
2 properties within the Site not owned or controlled by Defendant where remedial activities or  
3 investigations will be performed pursuant to this Decree.

4           4.       Ecology or any Ecology authorized representative shall give notice to Defendant  
5 before entering any Site property owned or controlled by Defendant unless an emergency  
6 prevents such notice. Notification shall be provided by Ecology to the Project Coordinator.

7               A.       The Ecology authorized representatives identified in Exhibit D shall give  
8 at least 24 hours' notice before entering any portion of the Site. Notification pursuant to  
9 this paragraph may be delivered in writing via email, or verbally via phone call. The  
10 Director of Public Works and the Water Treatment Plant Manager identified in Exhibit D  
11 each have the authority to waive the 24 hours' notice requirement for the Ecology  
12 authorized representative identified in Exhibit D. Either party may change their listed  
13 representative in Exhibit D upon ten (10) days' written notice to the other party. Such a  
14 change is not considered an amendment to the Consent Decree. Either party may change  
15 their listed representative without the concurrence of the other party.

16              B.       Any and all other Ecology authorized representative(s) not identified in  
17 Exhibit D seeking access pursuant to this section shall give at least 72 hours' notice  
18 before entering any portion of the Site. Notification pursuant to this paragraph requires  
19 Ecology to provide a written list to Defendant of the names, job titles, office addresses,  
20 public email addresses, and public telephone numbers of all Ecology authorized  
21 representatives who will enter the Site during such visit.

22              C.       Defendant may not deny an Ecology authorized representative access if  
23 proper notification has been given.

24           5.       All Parties who access the Site pursuant to this section shall comply with any  
25 applicable health and safety plan(s). Ecology employees and their representatives shall not be  
26 required to sign any liability release or waiver as a condition of Site property access.

1                   **X.       SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

2           1.       With respect to the implementation of this Decree, Defendant shall make the  
3 results of all sampling, laboratory reports, and/or test results generated by it or on its behalf  
4 available to Ecology by submitting data as detailed in this section. Pursuant to  
5 WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and  
6 electronic formats in accordance with Section XI (Progress Reports), Ecology's Toxics Cleanup  
7 Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified  
8 by Ecology for data submittal.

9           2.       If requested by Ecology, Defendant shall allow Ecology and/or its authorized  
10 representative to take split or duplicate samples of any samples collected by Defendant pursuant  
11 to the implementation of this Decree. Defendant shall notify Ecology seven (7) days in advance  
12 of any sample collection or work activity at the Site. Ecology shall, upon request, allow  
13 Defendant and/or its authorized representative to take split or duplicate samples of any samples  
14 collected by Ecology pursuant to the implementation of this Decree, provided that doing so does  
15 not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section IX  
16 (Access), Ecology shall notify Defendant prior to any sample collection activity unless an  
17 emergency prevents such notice.

18           3.       In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses  
19 shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be  
20 conducted, unless otherwise approved by Ecology.

21                   **XI.       RETENTION OF RECORDS**

22           1.       During the pendency of this Decree, and for ten (10) years from the date this  
23 Decree is no longer in effect as provided in Section XXVIII (Duration of Decree), Defendant  
24 shall preserve all records, reports, documents, and underlying data in its possession relevant to  
25 the implementation of this Decree and shall insert a similar record retention requirement into all  
26

1 contracts with project contractors and subcontractors. Upon request of Ecology, Defendant shall  
2 make all records available to Ecology and allow access for review within a reasonable time.

3 2. Nothing in this Decree is intended by Defendant to waive any right it may have  
4 under applicable law to limit disclosure of documents protected by the attorney work-product  
5 privilege and/or the attorney-client privilege. If Defendant withholds any requested records  
6 based on an assertion of privilege, Defendant shall provide Ecology with a privilege log  
7 specifying the records withheld and the applicable privilege. No Site-related data collected  
8 pursuant to this Decree shall be considered privileged; however, this does not preclude  
9 Defendant from asserting attorney-client privilege, attorney-work product, or any other  
10 protection over draft narratives and reports that incorporate Site-related data as indicated above.

## 11 **XII. TRANSFER OF INTEREST IN PROPERTY**

12 1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other  
13 interest in any portion of the Site shall be consummated by Defendant without provision for  
14 continued operation and maintenance of any containment system, treatment system, and/or  
15 monitoring system installed or implemented pursuant to this Decree.

16 2. Prior to Defendant's transfer of any interest in all or any portion of the Site, and  
17 during the effective period of this Decree, Defendant shall provide a copy of this Decree to any  
18 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at  
19 least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said transfer. Upon  
20 its transfer of any interest, Defendant shall notify all transferees of the restrictions on the  
21 activities and uses of the property under this Decree and incorporate any such use restrictions  
22 into the transfer documents.

## 23 **XIII. RESOLUTION OF DISPUTES**

24 1. In the event that Defendant elects to invoke dispute resolution, Defendant must  
25 utilize the procedure set forth below.  
26



1           A.     Upon the triggering event (receipt of Ecology's project coordinator's  
2 written decision or an itemized billing statement), Defendant has fourteen (14) calendar  
3 days within which to notify Ecology's project coordinator in writing of its dispute  
4 (Informal Dispute Notice).

5           B.     The Parties' project coordinators shall then confer in an effort to resolve  
6 the dispute informally. The parties shall informally confer for up to fourteen (14)  
7 calendar days from receipt of the Informal Dispute Notice. If the project coordinators  
8 cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar  
9 days, Ecology's project coordinator shall issue a written decision (Informal Dispute  
10 Decision) stating: the nature of the dispute; the Defendant's position with regard to the  
11 dispute; Ecology's position with regard to the dispute; and the extent of resolution  
12 reached by informal discussion.

13           C.     Defendant may then request regional management review of the dispute.  
14 This request (Formal Dispute Notice) must be submitted in writing to the Northwest  
15 Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of  
16 Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written  
17 statement of dispute setting forth: the nature of the dispute; the disputing Party's position  
18 with respect to the dispute; and the information relied upon to support its position.

19           D.     The Section Manager shall conduct a review of the dispute and shall issue  
20 a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar  
21 days of receipt of the Formal Dispute Notice.

22           E.     If Defendant finds Ecology's Regional Section Manager's decision  
23 unacceptable, Defendant may then request final management review of the decision. This  
24 request (Final Review Request) shall be submitted in writing to the Toxics Cleanup  
25 Program Manager within seven (7) calendar days of Defendant's receipt of the Decision  
26 on Dispute. The Final Review Request shall include a written statement of dispute setting

1        forth: the nature of the dispute; the disputing Party's position with respect to the dispute;  
2        and the information relied upon to support its position.

3                F.        Ecology's Toxics Cleanup Program Manager shall conduct a review of  
4        the dispute and shall issue a written decision regarding the dispute (Final Decision on  
5        Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The  
6        Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the  
7        disputed matter.

8                2.        If Ecology's Final Decision on Dispute is unacceptable to Defendant, Defendant  
9        has the right to submit the dispute to the Court for resolution. The Parties agree that, to the extent  
10       practicable for the Court, one judge should retain jurisdiction over this case and shall, as  
11       necessary, resolve any dispute arising under this Decree. Under RCW 70A.305.070, Ecology's  
12       investigative and remedial decisions shall be upheld unless they are arbitrary and capricious.

13               3.        The Parties agree to only utilize the dispute resolution process in good faith and  
14       agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
15       Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,  
16       the other party may seek sanctions from the Court.

17               4.        Implementation of these dispute resolution procedures shall not provide a basis  
18       for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule  
19       extension or the Court so orders.

20               5.        In case of a dispute, failure to either proceed with the work required by this  
21       Decree or timely invoke dispute resolution may result in Ecology's determination that  
22       insufficient progress is being made in preparation of a deliverable, and may result in Ecology  
23       undertaking the work under Section XXV (Implementation of Remedial Action).

#### 24                                **XIV.    AMENDMENT OF DECREE**

25               1.        The Parties may agree to minor changes to the work to be performed without  
26       formally amending this Decree. Minor changes will be documented in writing by Ecology.

1           2.       Substantial changes to the work to be performed shall require formal amendment  
2 of this Decree. This Decree may only be formally amended by a written stipulation among the  
3 Parties that is entered by the Court, or by order of the Court. Ecology will provide its written  
4 consent to a formal amendment only after public notice and opportunity to comment on the  
5 formal amendment. Such amendment shall become effective upon entry by the Court.  
6 Agreement to amend the Decree shall not be unreasonably withheld by any party.

7           3.       When requesting a change to the Decree, Defendant shall submit a written request  
8 to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a  
9 timely manner after the written request is received. If Ecology determines that the change is  
10 substantial, then the Decree must be formally amended. Reasons for the disapproval of a  
11 proposed change to this Decree shall be stated in writing. If Ecology does not agree to the  
12 requested change, the disagreement may be addressed through the dispute resolution procedures  
13 described in Section XIV (Resolution of Disputes).

#### 14                                   **XV.    EXTENSION OF SCHEDULE**

15           1.       Defendant's request for an extension of schedule shall be granted only when a  
16 request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior  
17 to expiration of the deadline for which the extension is requested, and good cause exists for  
18 granting the extension. All extensions shall be requested in writing. The request shall specify:

- 19                   A.       The deadline that is sought to be extended.
- 20                   B.       The length of the extension sought.
- 21                   C.       The reason(s) for the extension.
- 22                   D.       Any related deadline or schedule that would be affected if the extension  
23 were granted.

24           2.       The burden shall be on Defendant to demonstrate to the satisfaction of Ecology  
25 that the request for such extension has been submitted in a timely fashion and that good cause  
26 exists for granting the extension. Good cause may include, but may not be limited to:

1           A.     Circumstances beyond the reasonable control and despite the due  
2 diligence of Defendant including delays caused by unrelated third parties or Ecology,  
3 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying  
4 documents submitted by Defendant.

5           B.     A shelter in place or work stoppage mandated by government order due to  
6 public health and safety emergencies.

7           C.     Acts of God, including fire, flood, blizzard, extreme temperatures, storm,  
8 or other unavoidable casualty.

9           D.     Endangerment as described in Section XVII (Endangerment).

10         3.     However, neither increased costs of performance of the terms of this Decree nor  
11 changed economic circumstances shall be considered circumstances beyond the reasonable  
12 control of Defendant.

13         4.     Ecology shall act upon any Defendant's written request for extension in a timely  
14 fashion. Ecology shall give Defendant written notification of any extensions granted pursuant to  
15 this Decree. A requested extension shall not be effective until approved by Ecology or, if  
16 required, by the Court. Unless the extension is a substantial change, it shall not be necessary to  
17 amend this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension  
18 is granted.

19         5.     At Defendant's request an extension shall only be granted for such period of time  
20 as Ecology determines is reasonable under the circumstances. Ecology may grant schedule  
21 extensions exceeding ninety (90) days only as a result of one of the following:

22           A.     Delays in the issuance of a necessary permit which was applied for in a  
23 timely manner.

24           B.     Other circumstances deemed exceptional or extraordinary by Ecology.

25           C.     Endangerment as described in Section XVII (Endangerment).

## **XVI. ENDANGERMENT**

1. In the event Ecology determines that any activity being performed at the Site under this Decree is creating or has the potential to create a danger to human health or the environment, Ecology may direct Defendant to cease such activities for such period of time as it deems necessary to abate the danger. Defendant shall immediately comply with such direction.

2. In the event Defendant determines that any activity being performed at the Site under this Decree is creating or has the potential to create a danger to human health or the environment, Defendant may cease such activities. Defendant shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, Defendant shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Defendant's cessation of activities, it may direct Defendant to resume such activities.

3. If Ecology concurs with or orders a work stoppage pursuant to this section, Defendant's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended, in accordance with Section XVI (Extension of Schedule), for such period of time as Ecology determines is reasonable under the circumstances.

4. Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

## **XVII. COVENANT NOT TO SUE**

1. Covenant Not to Sue: In consideration of Defendant's compliance with the terms and conditions of this Decree, Ecology covenants not to institute legal or administrative actions against Defendant regarding the release or threatened release of hazardous substances at the Site, as described in Section IV.1.A (Definitions) and Section V.1.A (Findings of Fact) and shown on

1 Exhibit A. This Covenant Not to Sue does not cover any other hazardous substance(s) or area.  
2 Ecology retains all of its authority relative to any hazardous substance(s) or area not covered by  
3 this Decree.

4 This Covenant Not to Sue shall have no applicability whatsoever to:

- 5 A. Criminal liability.
- 6 B. Liability for damages to natural resources.
- 7 C. Any Ecology action, including cost recovery, against PLPs not a party to  
8 this Decree.

9 2. Pursuant to RCW 70A.305.040(4)(c), the Court shall amend this Covenant Not  
10 to Sue if factors not known at the time of entry of this Decree are discovered and present a  
11 previously unknown threat to human health or the environment.

12 3. Reopeners: Ecology specifically reserves the right to institute legal or  
13 administrative action against Defendant to require it to perform additional remedial actions at  
14 the Site and to pursue appropriate cost recovery, pursuant to RCW 70A.305.050, under any of  
15 the following circumstances:

- 16 A. Upon Defendant's failure to meet the requirements of this Decree.
- 17 B. Failure of the remedial action to meet the cleanup standards identified in  
18 the CAP (Exhibit B).
- 19 C. Upon Ecology's determination that remedial action beyond the terms of  
20 this Decree is necessary to abate an imminent and substantial endangerment to human  
21 health or the environment.
- 22 D. Upon the availability of information previously unknown to Ecology  
23 regarding Site factors including the nature, quantity, migration, pathway, or mobility of  
24 hazardous substances, and Ecology's determination, in light of this information, that  
25 further remedial action is necessary at the Site to protect human health or the  
26 environment.

1 E. Upon Ecology's determination that additional remedial actions are  
2 necessary to achieve cleanup standards within the reasonable restoration time frame set  
3 forth in the CAP.

4 4. Except in the case of an emergency, prior to instituting legal or administrative  
5 action against Defendant pursuant to this section, Ecology shall provide Defendant with fifteen  
6 (15) calendar days' notice of such action.

#### 7 XVIII. CONTRIBUTION PROTECTION

8 With regard to claims for contribution against Defendant, the Parties agree that  
9 Defendant is entitled to protection against claims for contribution for matters addressed in this  
10 Decree as provided by RCW 70A.305.040(4)(d).

#### 11 XIX. INDEMNIFICATION

12 Defendant agrees to indemnify and save and hold the State of Washington, its employees,  
13 and agents harmless from any and all claims or causes of action (1) for death or injuries to  
14 persons, or (2) for loss or damage to property to the extent arising from or on account of acts or  
15 omissions of Defendant, its officers, employees, agents, or contractors in entering into and  
16 implementing this Decree. However, Defendant shall not indemnify the State of Washington nor  
17 save nor hold its employees and agents harmless from any claims or causes of action to the extent  
18 arising out of the negligent acts or omissions of the State of Washington, or the employees or  
19 agents of the State, in entering into or implementing this Decree.

#### 20 XX. COMPLIANCE WITH APPLICABLE LAWS

21 1. Applicable Law. All actions carried out by Defendant pursuant to this Decree  
22 shall be done in accordance with all applicable federal, state, and local requirements, including  
23 requirements to obtain necessary permits, except as provided in RCW 70A.305.090. The permits  
24 or specific federal, state, or local requirements that the agency has determined are applicable and  
25 that are known at the time of the execution of this Decree have been identified in Exhibit E.  
26 Defendant has a continuing obligation to identify additional applicable federal, state, and local

1 requirements which apply to actions carried out pursuant to this Decree, and to comply with  
2 those requirements. As additional federal, state, and local requirements are identified by Ecology  
3 or the Defendant, Ecology will document in writing if they are applicable to actions carried out  
4 pursuant to this Decree, and the Defendant must implement those requirements.

5       2.     Relevant and Appropriate Requirements. All actions carried out by Defendant  
6 pursuant to this Decree shall be done in accordance with relevant and appropriate requirements  
7 identified by Ecology. The relevant and appropriate requirements that Ecology has determined  
8 apply have been identified in Exhibit F. If additional relevant and appropriate requirements are  
9 identified by Ecology or the Defendant, Ecology will document in writing if they are applicable  
10 to actions carried out pursuant to this Decree and the Defendant must implement those  
11 requirements.

12       3.     Pursuant to RCW 70A.305.090(1), Defendant may be exempt from the  
13 procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of  
14 any laws requiring or authorizing local government permits or approvals. However, Defendant  
15 shall comply with the substantive requirements of such permits or approvals. For permits and  
16 approvals covered under RCW 70A.305.090(1) that have been issued by local government, the  
17 Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local  
18 government permits and/or approvals. At this time, no state or local permits or approvals have  
19 been identified as being applicable but procedurally exempt under this section.

20       4.     Defendant has a continuing obligation to determine whether additional permits or  
21 approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial  
22 action under this Decree. In the event either Ecology or Defendant determines that additional  
23 permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the  
24 remedial action under this Decree, it shall promptly notify the other party of its determination.  
25 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the  
26 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly consult



1 with the appropriate state and/or local agencies and provide Ecology with written documentation  
2 from those agencies of the substantive requirements those agencies believe are applicable to the  
3 remedial action. Ecology shall make the final determination on the additional substantive  
4 requirements that must be met by Defendant and on how Defendant must meet those  
5 requirements. Ecology shall inform Defendant in writing of these requirements. Once established  
6 by Ecology, the additional requirements shall be enforceable requirements of this Decree.  
7 Defendant shall not begin or continue the remedial action potentially subject to the additional  
8 requirements until Ecology makes its final determination.

9         5. Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the  
10 exemption from complying with the procedural requirements of the laws referenced in  
11 RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary  
12 for the state to administer any federal law, the exemption shall not apply and Defendant shall  
13 comply with both the procedural and substantive requirements of the laws referenced in  
14 RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

## 15                                   **XXI. REMEDIAL ACTION COSTS**

16         1. Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree  
17 and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology  
18 or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Decree  
19 preparation, negotiation, oversight, and administration. These costs shall include work  
20 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall include  
21 costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2).  
22 For all costs incurred, Defendant shall pay the required amount within sixty (60) days of  
23 receiving from Ecology an itemized statement of costs that includes a summary of costs incurred,  
24 an identification of involved staff, and the amount of time spent by involved staff members on  
25 the project. A general statement of work performed will be provided upon request. Itemized  
26 statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay

1 Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result  
2 in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

3 2. In addition to other available relief, pursuant to RCW 19.16.500, Ecology may  
4 utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property  
5 subject to the remedial actions to recover unreimbursed remedial action costs.

## 6 **XXII. IMPLEMENTATION OF REMEDIAL ACTION**

7 1. If Ecology determines that the Defendant has failed to make sufficient progress  
8 or failed to implement the remedial action, in whole or in part, Ecology may, after notice to  
9 Defendant, perform any or all portions of the remedial action or at Ecology's discretion allow  
10 the Defendant opportunity to correct. In an emergency, Ecology is not required to provide notice  
11 to Defendant, or an opportunity for dispute resolution. The Defendant shall reimburse Ecology  
12 for the costs of doing such work in accordance with Section XXIV (Remedial Action Costs).

13 2. Except where necessary to abate an emergency situation or where required by  
14 law, the Defendant shall not perform any remedial actions at the Site outside those remedial  
15 actions required by this Decree to address the contamination that is the subject of this Decree,  
16 unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV  
17 (Amendment of Decree). In the event of an emergency, or where actions are taken as required  
18 by law, Defendant must notify Ecology in writing of the event and remedial action(s) planned  
19 or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of  
20 the event.

## 21 **XXIII. PUBLIC PARTICIPATION**

22 1. Ecology shall maintain the responsibility for public participation at the Site.  
23 However, Defendant shall cooperate with Ecology, and shall:

24 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts  
25 of public notices and fact sheets at important stages of the remedial action, such as the  
26 submission of work plans, remedial investigation/feasibility study reports, cleanup action

1 plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and  
2 distribute such fact sheets and prepare and distribute public notices of Ecology's  
3 presentations and meetings.

4 B. Notify Ecology's project coordinator prior to the preparation of all press  
5 releases and fact sheets, and before meetings related to remedial action work to be  
6 performed at the Site with the interested public and/or local governments. Likewise,  
7 Ecology shall notify Defendant prior to the issuance of all press releases and fact sheets  
8 related to remedial action work to be performed at the Site, and before meetings related  
9 to remedial action work to be performed at the Site with the interested public and/or local  
10 governments. For all press releases, fact sheets, meetings, and other outreach efforts by  
11 Defendant that do not receive prior Ecology approval, Defendant shall clearly indicate to  
12 its audience that the press release, fact sheet, meeting, or other outreach effort was not  
13 sponsored or endorsed by Ecology.

14 C. When requested by Ecology, participate in public presentations on the  
15 progress of the remedial action at the Site. Participation may be through attendance at  
16 public meetings to assist in answering questions, or as a presenter.

17 D. When requested by Ecology, arrange and/or continue information  
18 repositories at the following locations:

- 19 i. City of Anacortes City Hall  
20 904 6<sup>th</sup> Street  
21 P.O. Box 547  
22 Anacortes, WA 98221
- 23 ii. Washington State Department of Ecology  
24 Bellingham Field Office  
25 913 Squalicum Way, Suite 101  
26 Bellingham, WA 98225-2078
- iii. Washington State Department of Ecology  
Northwest Regional Office, Toxics Cleanup Program  
15700 Dayton Ave N Shoreline, WA 98133

1 At a minimum, copies of all public notices, fact sheets, and documents relating to public  
2 comment periods shall be promptly placed in these repositories. A copy of all documents related  
3 to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in  
4 Shoreline, Washington.

#### 5 **XXIV. DURATION OF DECREE**

6 The remedial program required pursuant to this Decree shall be maintained and continued  
7 until Defendant has received written notification from Ecology that the requirements of this  
8 Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by  
9 the Court. When dismissed, Section XII (Retention of Records), and Section XVIII (Covenant  
10 Not to Sue) shall survive.

#### 11 **XXV. CLAIMS AGAINST THE STATE**

12 Defendant hereby agrees that it will not seek to recover any costs accrued in  
13 implementing the remedial action required by this Decree from the State of Washington or any  
14 of its agencies; and further, that Defendant will make no claim against the State Toxics Control  
15 Account, the Local Toxics Control Account, the Environmental Legacy Stewardship Account,  
16 or a MTCA Cleanup Settlement Account for any costs incurred in implementing this Decree.  
17 Except as provided above, however, Defendant expressly reserves its right to seek to recover  
18 any costs incurred in implementing this Decree from any other PLP. This section does not limit  
19 or address funding that may be provided under WAC 173-322A.

#### 20 **XXVI. EFFECTIVE DATE**

21 This Decree is effective upon the date it is entered by the Court.

22 //

23 //

24 //

25 //


26 //


1 XXVII. WITHDRAWAL OF CONSENT

2 If the Court withholds or withdraws its consent to this Decree, it shall be null and void at  
3 the option of any party and the accompanying Complaint shall be dismissed without costs and  
4 without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

5 STATE OF WASHINGTON  
6 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General


7   
8 BROCK MILLERN  
9 Program Manager  
10 Toxics Cleanup Program  
360-407-7177

  
GABRIELLE GURIAN, WSBA #55584  
Assistant Attorney General  
360-586-6769

11 Date: 11/15/21

Date: December 9, 2021

12 CITY OF ANACORTES

13   
14 LAURIE GERE  
15 Mayor of the City of Anacortes  
360-299-1950

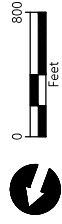
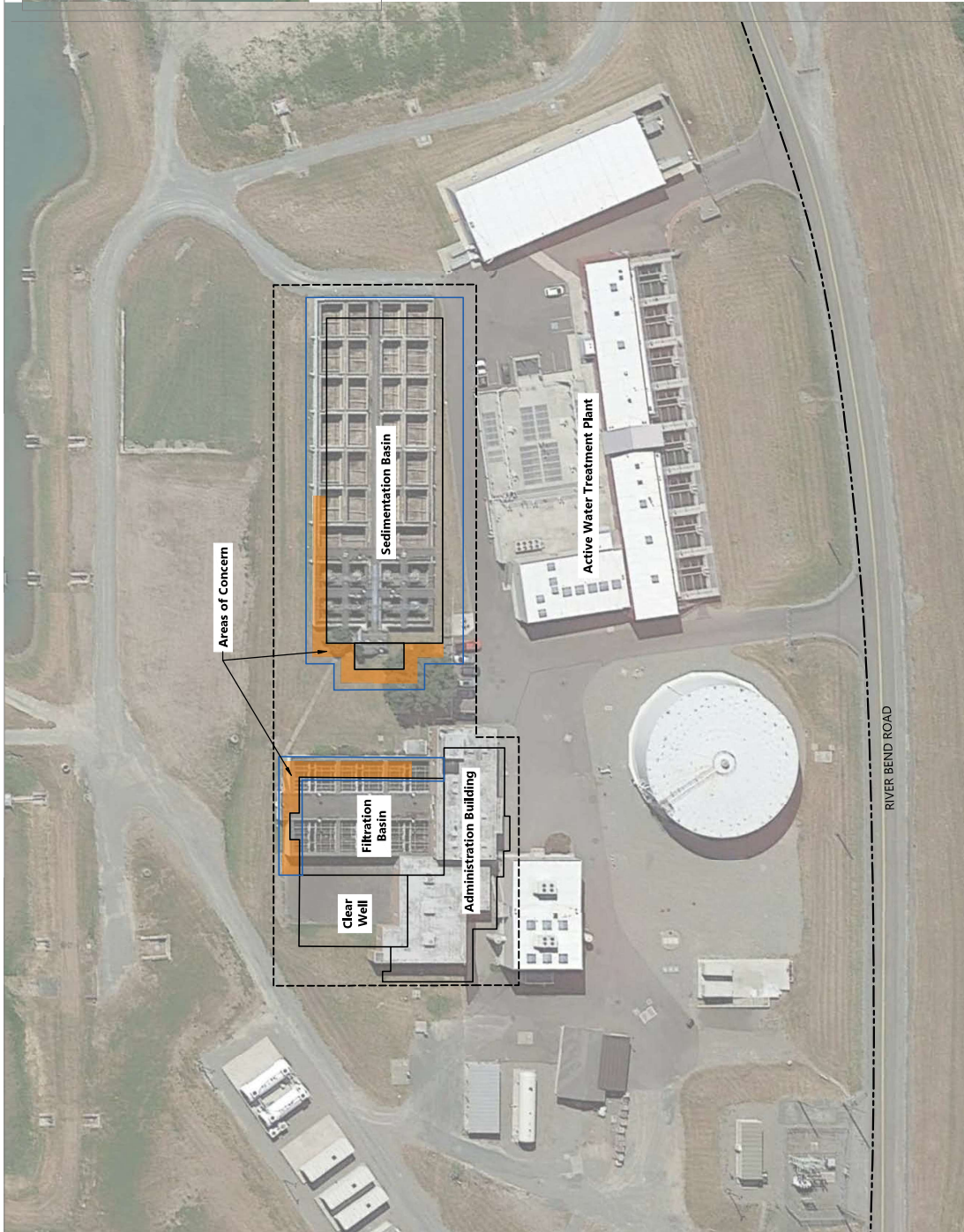
16 Date: October 28, 2021

17  
18 ENTERED this 10<sup>th</sup> day of December 2021.

19  
20   
21 JUDGE/COMMISSIONER E. Neidzowski  
22 Skagit County Superior Court  
23  
24  
25  
26

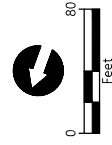
# **EXHIBIT A**

## **Site Diagram**



**LEGEND:**

- Property Boundary
- Site Boundary
- Former Water Treatment Plant
- Areas of Concern



**SOURCE:** Property boundary digitized from Skagit County Assessor website, August 20, 2020.  
**HORIZONTAL DATUM:** Washington State Plane North Zone, North American Datum of 1983 (NAD83), U.S. Survey Feet

Publication Date: 2020/08/20 4:35 PM | User: lmerick  
 Filepath: K:\Projects\1182-Foster Pepper PLLC\Former Anacortes Water Treatment Plant\_Feasibility Study\1182-182-006 (Exhibit A).dwg Exhibit A



# **EXHIBIT B**

## **Cleanup Action Plan**





DEPARTMENT OF  
**ECOLOGY**  
State of Washington

July 2021  
Former Anacortes Water Treatment Plant

---

## Final Cleanup Action Plan

**Issued by**

Washington State Department of Ecology  
Toxics Cleanup Program  
Bellingham Field Office  
913 Squalicum Way, Unit 101  
Bellingham, Washington 98225

# TABLE OF CONTENTS

Executive Summary.....	ES-1
<b>1 Introduction .....</b>	<b>1</b>
1.1 Purpose .....	1
1.2 Previous Studies.....	1
1.3 Regulatory Framework.....	2
<b>2 Site Description .....</b>	<b>4</b>
2.1 Site History and Current Use .....	4
2.2 Summary of Contaminants in Environmental Media .....	6
2.3 Conceptual Site Model.....	7
<b>3 Description of the Selected Remedy .....</b>	<b>9</b>
3.1 Site Description.....	9
3.2 Description of the Cleanup Action.....	9
3.2.1 Source Control Through Demolition and Disposal.....	10
3.2.2 Soil Remediation Through Excavation and Disposal.....	10
3.3 Justification for Selection of Remedy.....	11
3.4 Cleanup Standards.....	11
3.5 Applicable Local, State, and Federal Laws .....	12
3.5.1 State Environmental Policy Act Determination.....	13
3.5.2 Construction Stormwater General Permit.....	13
3.5.3 Asbestos and Demolition Notification Approval .....	13
3.5.4 Demolition and Grading Permits.....	13
3.6 Restoration Time Frame.....	13
<b>4 Implementation of the Cleanup Action .....</b>	<b>14</b>
4.1 Schedule .....	14
4.2 Compliance Monitoring.....	15
4.3 Institutional Controls .....	15
4.4 Public Participation.....	15
<b>5 References .....</b>	<b>16</b>

## TABLES

Table 1-1	Previous Site Investigations .....	1
Table 3-1	Cleanup Standard.....	11
Table 3-2	Applicable Permits and Approvals.....	12
Table 4-1	Anticipated Schedule for Implementation of Cleanup Action Activities.....	14

## FIGURES

Figure 1-1	Vicinity Map .....	3
Figure 2-1	Site Map and Structures.....	5
Figure 2-2	RI Soil Sampling Locations and Areas of Concern .....	6
Figure 2-3	Source Material Characteristics.....	7
Figure 2-4	Conceptual Site Model.....	8
Figure 3-1	Preferred Alternative Overview .....	9

## APPENDIX

Appendix A	Applicable or Relevant and Appropriate Requirements
------------	---

## ABBREVIATIONS

AOC	Area of Concern
ARAR	Applicable or Relevant and Appropriate Requirement
bgs	below ground surface
CAP	Cleanup Action Plan
City	City of Anacortes
CQAP	Construction Quality Assurance Plan
CSGP	Construction Stormwater General Permit
Ecology	Washington State Department of Ecology
EDR	Engineering Design Report
FS	Feasibility Study
FWTP	Former Water Treatment Plant
Method A:U	Model Toxics Control Act Method A Unrestricted Land Use
mg/kg	milligrams per kilogram
MTCA	Model Toxics Control Act
NPDES	National Pollutant Discharge Elimination System
NWCAA	Northwest Clean Air Agency
PAH	polycyclic aromatic hydrocarbon
PCB	polychlorinated biphenyl
RCW	Revised Code of Washington
RI	Remedial Investigation
SEPA	State Environmental Policy Act
Site	Former Anacortes Water Treatment Plant
SVOC	semivolatile organic compound
TCLP	Toxicity Characteristic Leaching Procedure
TEE	Terrestrial Ecologic Evaluation
VOC	volatile organic compound
WAC	Washington Administrative Code

## Executive Summary

This document presents the Cleanup Action Plan (CAP) for the Former Anacortes Water Treatment Plant (the Site) located in Mount Vernon, Washington (Figure 1-1). This CAP was prepared by the Washington State Department of Ecology (Ecology) in collaboration with the City of Anacortes (City). This CAP has been prepared to meet the requirements of the Model Toxics Control Cleanup Act (MTCA) administered by Ecology under Chapter 173-340 of the Washington Administrative Code (WAC). This CAP describes Ecology's proposed cleanup action for the Site and sets forth the requirements that the cleanup must meet.

The City operates a municipal water treatment plant at 14489 River Bend Road in Mount Vernon, Washington. The current facilities, which became operational in 2013, replaced the Former Water Treatment Plant (FWTP) that was constructed between 1969 and 1970. The FWTP facilities included an Administration Building, a Sedimentation Basin, a Filtration Basin, and a Clear Well.

During decommissioning activities performed in 2015, contaminants of potential concern were found in FWTP building materials and in shallow soils immediately adjacent to the FWTP structures. In 2015 and 2016, a Remedial Investigation (RI) was performed in accordance with the MTCA to characterize the nature and extent of contaminants in soil and groundwater at the Site. During that investigation, concentrations polychlorinated biphenyls (PCBs) were detected in soil at concentrations above MTCA Unrestricted Land Use cleanup levels. The results of the RI, which were submitted to Ecology in April 2017, confirmed that the exterior coatings on certain FWTP structures were the source of contaminants at the property. Elevated PCB concentrations were limited to the exterior coatings and the upper 1 foot of soil immediately adjacent to the exterior of the Sedimentation and Filtration Basins (i.e., the coated structures). No impacts to groundwater or surface water were identified.

In response to these findings, the City conducted an Evaluation of Potential Human Health Risks (Intertox 2017) associated with contamination at the FWTP and determined that no adverse health effects are likely to have occurred to customers, workers, or water plant visitors as a result of PCBs at the former plant. Additionally, the City conducted regular sampling of drinking water produced from the FWTP beginning in 1976 and continuing throughout operation. No samples of drinking water contained detectable concentrations of PCBs.

The City plans to demolish the FWTP structures and to achieve permanent source control and prepare the area for possible future reuse. Demolition of FWTP structures will remove the source of contamination, thereby preventing any future migration of PCBs from exterior building coatings to soil. Demolition, transport, and disposal will be performed in compliance with applicable laws to prevent releases of contaminated material during the demolition process. A detailed demolition plan will be developed prior to demolition activities.

Potential alternatives for addressing contaminated soil were evaluated in the Feasibility Study (FS) (Anchor QEA 2020). From the FS evaluation, full removal (i.e., excavation) and off-site disposal of all contaminated soils was identified as the preferred and most permanent alternative that will meet the most stringent cleanup standards under the MTCA. The cleanup action, as described in this CAP, consists of the removal of approximately 260 cubic yards of soil and compliance monitoring to verify that the goals of the cleanup have been achieved.

# 1 Introduction

## 1.1 Purpose

This document presents the Cleanup Action Plan (CAP) for the Former Anacortes Water Treatment Plant (the Site) located in Mount Vernon, Washington (Figure 1-1). Pursuant to Agreed Order No. DE16576 between the City of Anacortes (City) and the Washington State Department of Ecology (Ecology), this CAP identifies the proposed cleanup action for the Site. Specifically, this CAP does the following:

- Describes the Site
- Summarizes current Site conditions
- Summarizes the cleanup action alternatives considered in the remedy selection process
- Describes the selected cleanup action for the Site and the rationale for selecting this alternative
- Identifies site-specific cleanup levels and points of compliance for each hazardous substance and medium of concern for the proposed cleanup action
- Identifies applicable state and federal laws for the proposed cleanup action
- Discusses compliance monitoring requirements
- Presents the schedule for implementing the CAP

Cleanup conducted in conformance with this CAP will comply with the requirements for selection of a remedy under Washington Administrative Code (WAC) 173-340-360.

## 1.2 Previous Studies

During the period between 2015 and 2019, the City proactively completed several Site investigations to characterize the nature and extent of contaminants in soil, groundwater, and Former Water Treatment Plant (FWTP) building materials at the Site. The City submitted the draft RI to Ecology in April 2017 after completing the necessary Site investigations to support that report. The City sought Ecology's input on the draft RI and the Site and entered into Agreed Order No. DE16576 to complete the RI and FS in a formal process with Ecology. Previous investigations are summarized in Table 1-1.

**Table 1-1**  
**Previous Site Investigations**

Investigation	Performed By	Year	Summary of Investigation Activities
Geotechnical Investigation	Shannon & Wilson, Inc.	2010	Geotechnical investigation and review of historical site geotechnical data for engineering design of the current water treatment plant. Work included sampling of eight soil borings and geotechnical testing (e.g., water content, grain size, Atterberg limits) to characterize subsurface conditions (e.g., soil properties, depth to groundwater) at the Site.

Investigation	Performed By	Year	Summary of Investigation Activities
Hazardous Materials Assessment	DLH Environmental Consulting	2015	Evaluation of FWTP building materials for deconstruction. Work included sampling of concrete, paint, and building materials and testing for metals, SVOCs, PAHs, PCBs, and asbestos. In addition, one composite soil sample was collected from the exterior of the Sedimentation Basin and tested for metals, SVOCs, PAHs, and PCBs.
Remedial Investigation	Stantec Consulting Services, Inc.	2015 to 2017	Phased remedial investigation of Site building materials, soil, and groundwater to identify the nature and extent of contamination identified in the Hazardous Materials Assessment (DLH 2015). FWTP building materials (basin coatings, concrete, paint chips) were tested for PCBs, with a subset of samples also tested for TCLP (leachable) SVOCs, TCLP VOCs, and TCLP metals. Soil and groundwater samples were collected and analyzed for PCBs.
Human Health Risk Assessment	Intertox, Inc.	2017	Toxicity assessment of the possible human health risks associated with exposure to PCBs and other chemicals from building materials at the FWTP. This assessment used data from previous investigations and established toxicity criteria to evaluate human health risks. The assessment determined that no adverse health effects are likely to have occurred to customers, workers, or water plant visitors as a result of PCBs at the former plant.
Conceptual Site Model Refinement	Anchor QEA, LLC	2019	Assessment of PCB concentrations in the exterior walls of the Sedimentation and Filtration Basins of the FWTP. Depth-integrated sampling of concrete, coatings, and subgrade mastic was conducted to profile the nature and extent of PCBs in the exterior walls.

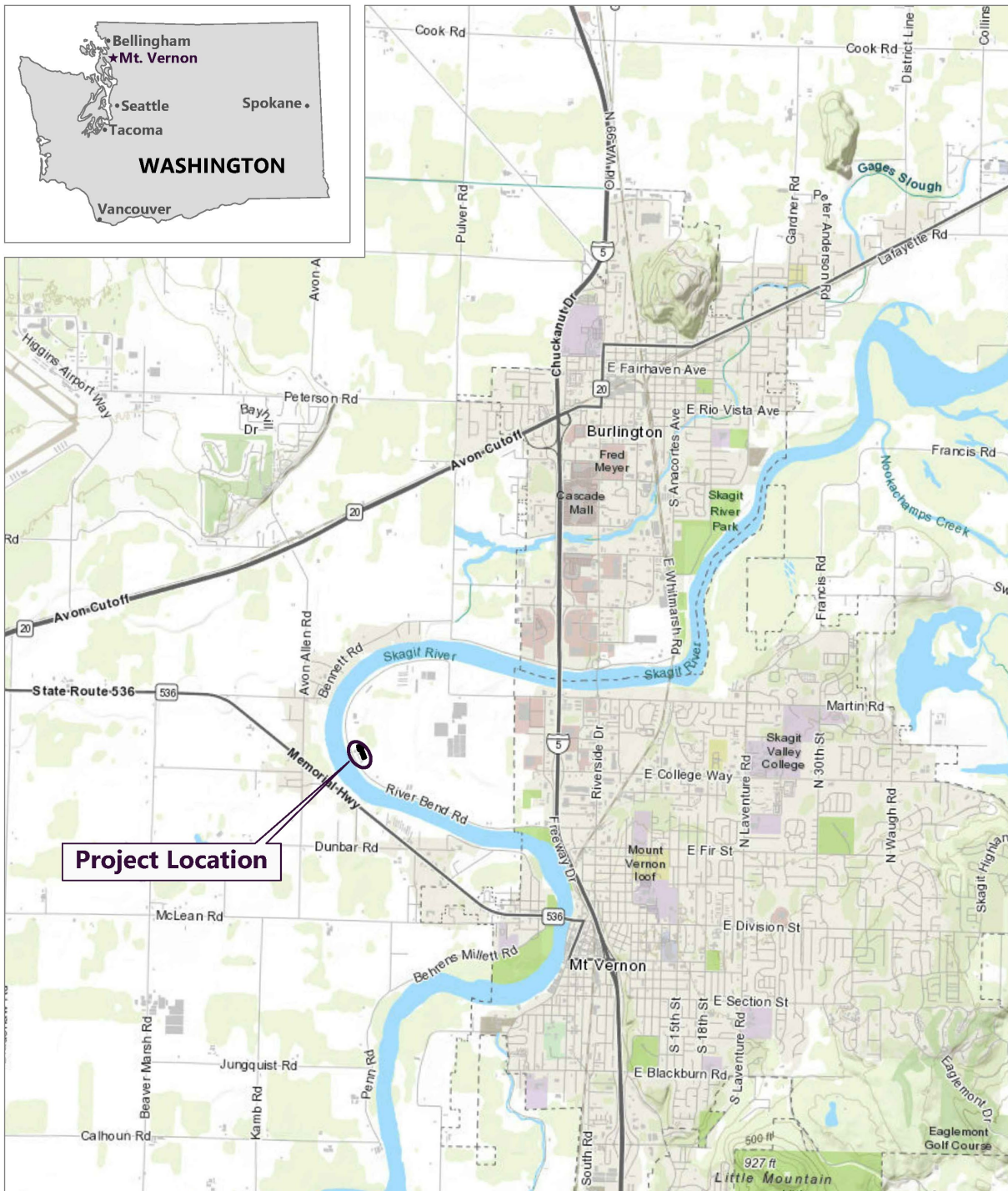
### 1.3 Regulatory Framework

In August 2019, the City entered into an Agreed Order with Ecology to complete a Remedial Investigation (RI) and Feasibility Study (FS) and draft CAP for the Site. In March 2020, Ecology provided the draft RI and FS reports for public review. A responsiveness summary to public comments was issued by Ecology in May 2020. The Final RI and FS reports were approved by Ecology in July 2020.

The cleanup action described in this CAP must be performed in accordance with the Model Toxics Control Cleanup Act (MTCA). Other regulatory requirements that may be applicable to Site cleanup are summarized in Section 3.5.



**Figure 1-1  
Vicinity Map**



SOURCE: Esri, et al

## 2 Site Description

### 2.1 Site History and Current Use

The City operates a municipal water treatment plant at 14489 River Bend Road in Mount Vernon, Washington. The current facilities, which became operational in 2013, replaced the FWTP that was constructed between 1969 and 1970. The FWTP facilities included an Administration Building, a Sedimentation Basin, a Filtration Basin, and a Clear Well (Figure 2-1). During decommissioning activities performed in 2015, contaminants of potential concern were found in decommissioned FWTP building materials and in shallow soils immediately adjacent to the FWTP structures. This CAP addresses source control related to FWTP building materials and cleanup of shallow soils immediately adjacent to the FWTP structures.

During decommissioning activities performed in 2015, polychlorinated biphenyls (PCBs) were found in decommissioned FWTP building materials and in shallow soils immediately adjacent to the FWTP structures. In 2015 and 2016, the RI was performed in accordance with the MTCA, Revised Code of Washington (RCW) 70.105D, and WAC 173-340 to characterize the nature and extent of contaminants in Site environmental media (i.e., soil and groundwater). The results of the RI, which were submitted to Ecology in 2017, confirmed that exterior coatings containing PCBs on the Sedimentation Basin and Filtration Basin of the FWTP were the source of PCBs in soil. PCB concentrations in soil above MTCA Method A Unrestricted Land Use (Method A:U) cleanup levels were limited to the upper 1 foot of soil immediately adjacent to the exterior of the Sedimentation and Filtration Basins. No impacts to groundwater were identified.

In 2017, the City conducted an Evaluation of Potential Human Health Risks (Intertox 2017) for the FWTP and determined that no adverse health effects are likely to have occurred to customers, workers, or water plant visitors as a result of PCBs at the former plant. The City conducted regular sampling of drinking water produced from the FWTP beginning in 1976 and continuing throughout operation of the FWTP. No samples of drinking water ever contained detectable concentrations of PCBs.

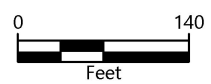
The RI (Stantec 2019) and FS (Anchor QEA 2020) evaluations were performed to identify the nature and extent of contaminants at the Site, identify cleanup requirements under the MTCA to protect human health and the environment, and evaluate potential cleanup options. In 2019, alternatives for cleanup presented in the FS were evaluated in coordination with Ecology, pursuant to the Agreed Order. The preferred alternative consisted of removal of all soils above the Method A:U cleanup level, which is the most permanent remedial action for the Site. The FS also provided an overview of the FWTP demolition activities that the City will perform to control sources of contaminants at the Site.



**Figure 2-1**  
**Site Map and Structures**



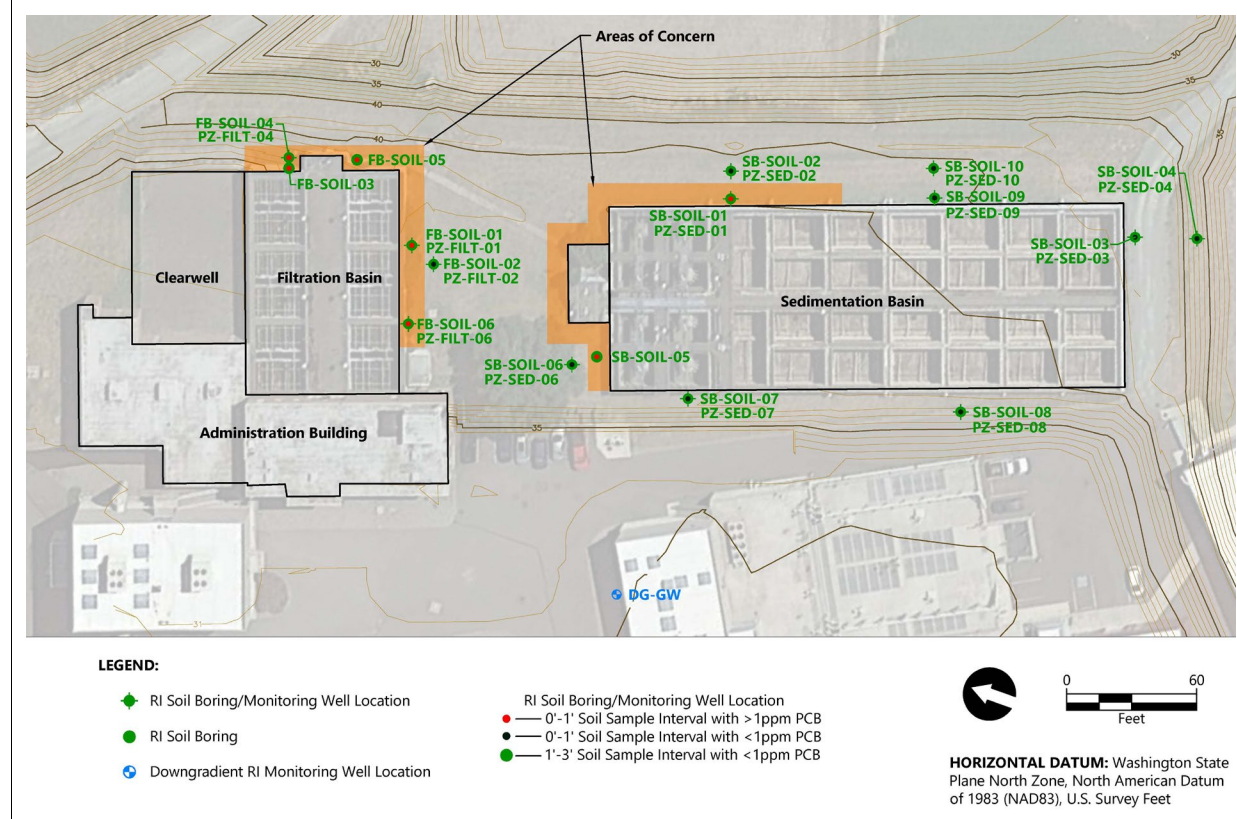
**SOURCE:** Google Earth Pro dated July 15, 2018



## 2.2 Summary of Contaminants in Environmental Media

As part of the RI, 32 soil samples and 16 groundwater samples were collected for PCB analysis. PCBs were detected above the Method A:U soil cleanup level (1 milligram per kilogram [mg/kg]) in 7 of 32 samples (Figure 2-2), with a maximum concentration of 15.6 mg/kg.

**Figure 2-2**  
**RI Soil Sampling Locations and Areas of Concern**



All seven soil sample cleanup level exceedances were located in shallow soils close to the exterior walls of the Filtration Basin and the Sedimentation Basin and confined to the upper 1 foot of soil. PCB concentrations in samples from 1 to 3 feet deep in the same borings were below 1 mg/kg. Based on the results of the RI, the following two Areas of Concern (AOCs) were defined, one along the south and east sides of the Filtration Basin, and one along the northern side and the north half of the eastern side of the Sedimentation Basin (Figure 2-2).

PCBs were not detected in any groundwater samples (Stantec 2019), and no PCBs have been detected in drinking water generated from the FWTP or the current water treatment plant. The Site Human Health Risk Assessment (Intertox 2017) concluded that no adverse health effects are likely to have occurred from PCBs to customers, workers, or trespassers at the FWTP. A simplified Terrestrial Ecologic

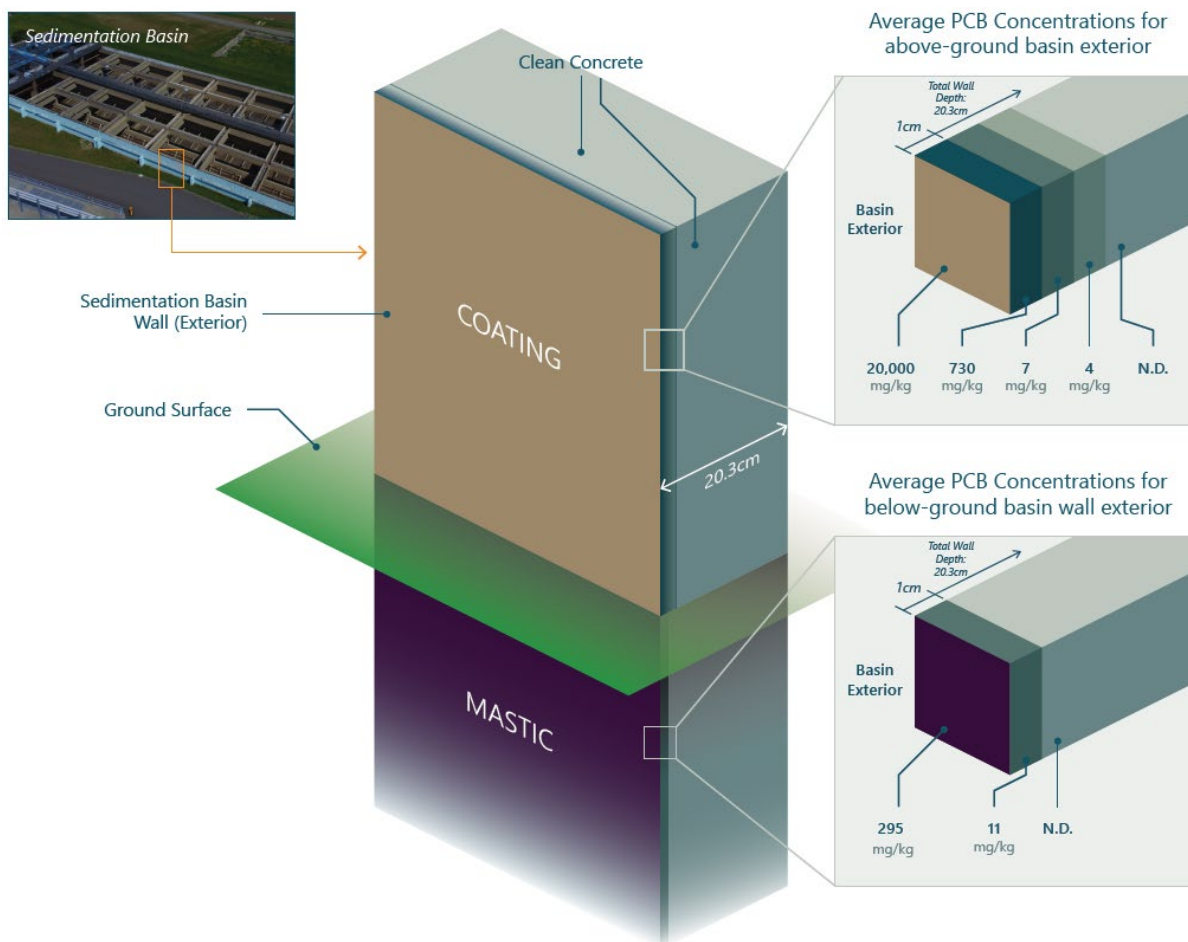


Evaluation (TEE) conducted as part of the RI found limited potential for exposure of wildlife to contaminants in soil, and no further ecological evaluation necessary.

## 2.3 Conceptual Site Model

Industrial coatings on the exterior of the Sedimentation Basin and the Filtration Basin were found to be the source of PCBs at the Site. As graphically described in Figure 2-3, the PCB source exists as a paper-fine veneer on the outer walls of the basins. Over time, PCBs were adsorbed by the outer 1 to 3 centimeters of the concrete and migrated vertically to below the soil line. Shallow Site soils were impacted through periodic weathering of the coating.

**Figure 2-3**  
**Source Material Characteristics**

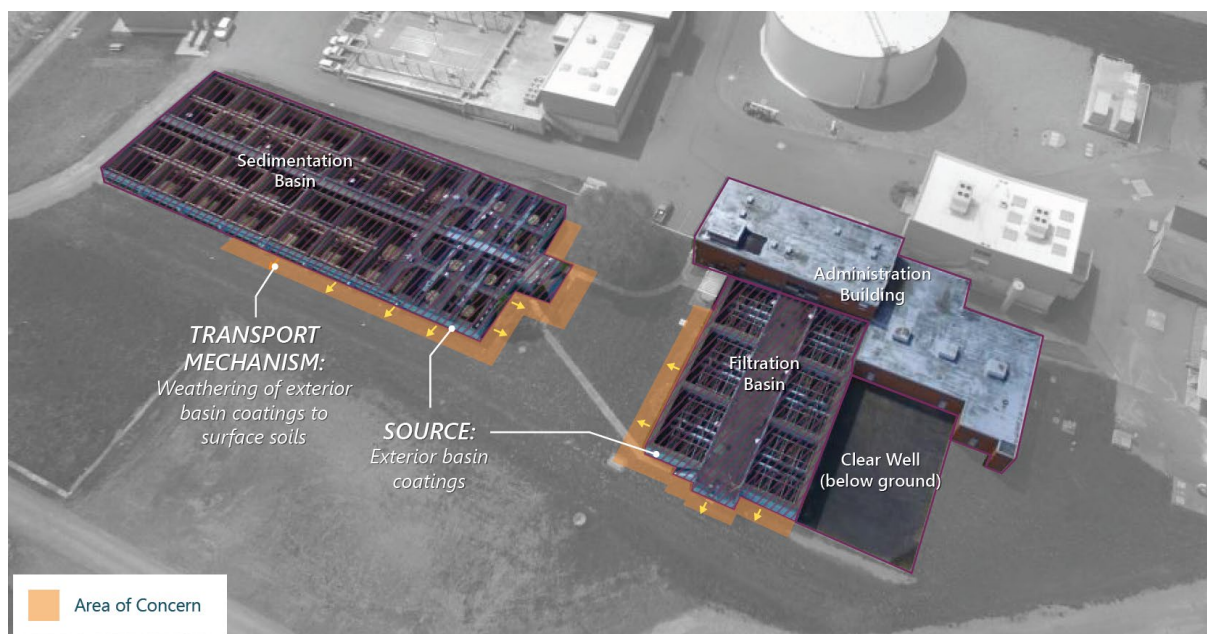


This graphic provides an illustration of the migration pathway of PCBs from the primary source material (i.e., the thin veneer coating on the exterior of the concrete basin walls located above the ground surface) as it was adsorbed into the adjacent concrete. Downward leaching also resulted in PCBs being adsorbed into the below-ground mastic layer and adjacent concrete. The migration of PCBs was very limited.

Possible receptors identified for evaluation consist of water treatment plant workers, contractors, visitors, and trespassers. Possible soil exposure pathways include incidental ingestion and dermal contact through non-routine activities such as excavation, grading, or other soil disturbance. However, any current or future exposure is very unlikely because no workers, contractors, or visitors routinely access the decommissioned FWTP structures at the Site; access to the FWTP area is not needed for operation of the current water treatment plant facility. Due to the secured nature of the Property, which is fully enclosed by high fencing and other security devices, it is unlikely for trespassers to access the Site.

The conceptual site model and Site AOCs are shown in Figure 2-4. Shallow soil samples from two AOCs contained PCBs exceeding the Method A:U soil cleanup level. The AOCs include only shallow soils (0 to 1 foot below ground surface [bgs]). AOC boundaries will be refined during remedial design based on Pre-Design Investigation data. No cleanup actions are necessary for other environmental media at the Site.

**Figure 2-4**  
**Conceptual Site Model**



The source of PCBs in soil is the coating on the exterior basin walls. The extent of impacted soils is limited. There is no current risk to human health from PCBs contained in coatings on the exterior basin walls.

## 3 Description of the Selected Remedy

### 3.1 Site Description

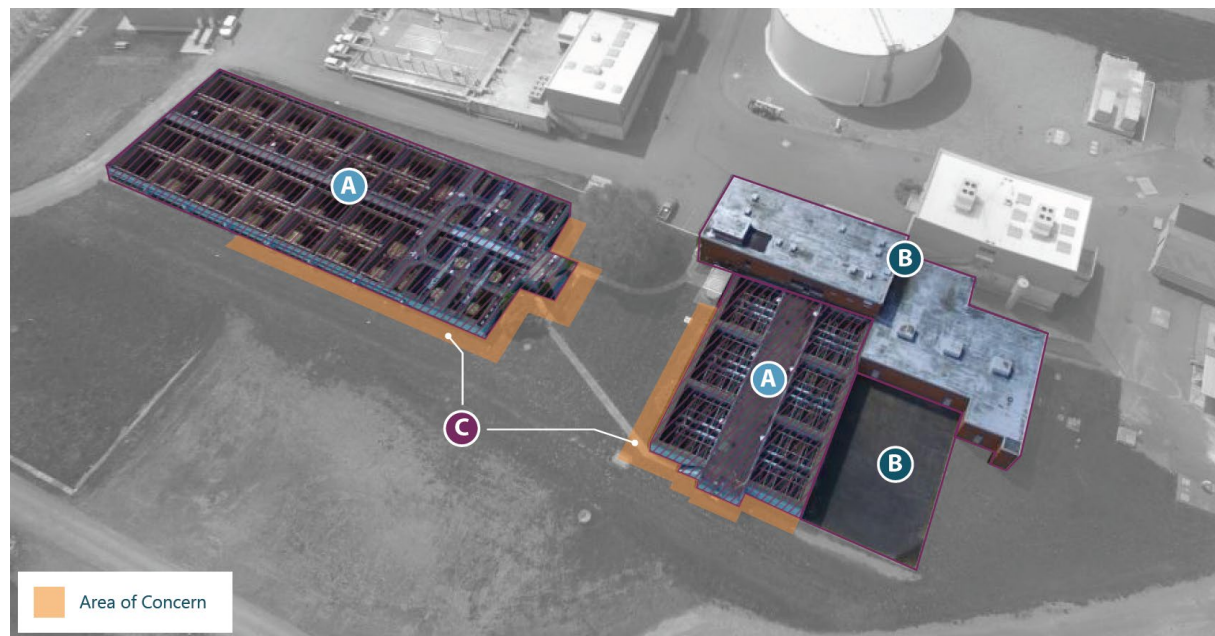
A site is defined under the MTCA as the area where contaminants have come to be located.

Figure 2-2 shows the AOCs for soil remediation. The Site boundary includes the Sedimentation Basin and Filtration Basin and the shallow soils immediately surrounding them. The AOC boundaries (i.e., the extent of PCB contamination exceeding the MTCA Method A:U cleanup level of 1 mg/kg) will be further verified during remedial design.

### 3.2 Description of the Cleanup Action

The selected cleanup action includes source control through demolition of the basin structures, excavation of impacted soils, and off-site disposal of contaminated materials (Figure 3-1).

**Figure 3-1**  
**Preferred Alternative Overview**



- A** Structures to be demolished for Source Control
- B** Decommissioned structures to be demolished as required by Site reuse
- C** Soil remediation AOCs to be excavated and backfilled

### *3.2.1 Source Control Through Demolition and Disposal*

As discussed in Section 2.2, the exterior coatings on the Filtration Basin and the Sedimentation Basin structures have been identified as the source of PCBs in soils within Site AOCs. While studies have determined that the coatings on these structures pose no risk to human health (Intertox 2017), the City plans to demolish the FWTP structures to achieve a more permanent source control action and prepare the area for potential redevelopment. Source control measures other than demolition and disposal (e.g., encapsulating contaminated material on the Site) are not considered viable because they are not consistent with future property use, as on-site containment of materials would require deed restrictions and long-term engineering controls.

Demolition, transport, and disposal of demolished building materials will be performed in compliance with applicable laws to prevent hazardous substances from being released during the demolition process. A detailed demolition plan will be developed prior to demolition activities. This plan will also include an environmental protection plan that will establish methods and procedures for protecting the environment during demolition.

Building materials that have average concentrations of less than the Method A:U soil cleanup level will also be demolished during source control implementation. These materials will be used as fill during post-demolition grading to prepare the area for future development. The Clear Well and Administration Building are not sources of PCBs to soil; therefore, demolition of these structures is not required to achieve source control at the Site.

### *3.2.2 Soil Remediation Through Excavation and Disposal*

In addition to source control, the selected cleanup action includes excavation and off-site disposal of PCB-contaminated soil. The soil excavation will occur after demolition work has been completed.

Excavation and off-site disposal are common remedial technologies that use standard earthwork construction equipment. Due to the shallow extent of contaminated soil at the Site (up to approximately 1 foot bgs), no shoring or water management will be needed during construction. Contaminated soil will be excavated and placed directly in a lined truck, covered, and transported to a permitted landfill. Soil will likely be disposed of in a Subtitle D landfill, consistent with all applicable laws and regulations. After excavation is complete, earthwork equipment will be decontaminated prior to leaving the Site. Compliance monitoring will be performed following the removal action to verify that cleanup standards have been achieved. The excavation area will be regraded with imported clean backfill to prepare the Site for future redevelopment activities.



### 3.3 Justification for Selection of Remedy

Two remedial alternatives were evaluated in the FS, summarized as follows:

- Alternative 1: partial removal with soil capping
- Alternative 2: full removal of soils exceeding the MTCA Method A:U cleanup level for PCBs

Both alternatives would protect human health and the environment and meet the minimum requirements specified under the MTCA (WAC 173-340-360(2)(a)). Alternative 2 was selected as the preferred alternative because it is more permanent than Alternative 1, and it is not disproportionately costly compared to Alternative 1. Therefore, Alternative 2 is considered permanent to the maximum extent practicable and was selected as the preferred alternative (WAC 173-340-360(3)(e)).

### 3.4 Cleanup Standards

A cleanup standard defines the concentration of a hazardous substance in media above which the impacted media may pose a risk to human health and the environment through a specified exposure pathway (i.e., the cleanup level) and the location at which the cleanup level must be met (i.e., the point of compliance). The MTCA Cleanup Regulations (WAC 173-340-720, 173-340-730, and 173-340-740) establish procedures to develop cleanup standards for surface water, groundwater, and soil.

MTCA Method A cleanup standards are applicable to sites that have few hazardous substances and will undergo a routine cleanup action as defined in WAC 173-340-200. At this Site there is a single contaminant of concern (PCBs) of a single medium (soil) in a limited area; therefore, MTCA Method A cleanup standards are applicable.

The MTCA provides the two Method A soil cleanup levels, for unrestricted land use and industrial properties, based on the Toxic Substances Control Act under 40 Code of Federal Regulations 761.61. Because the Site is likely to remain industrial for the foreseeable future, the Method A value for industrial property (10 mg/kg for PCBs) could be applicable at the Site; however, based on the FS alternatives evaluation, the most protective cleanup level for unrestricted land use (1 mg/kg for PCBs; Table 3-1) has been selected for the proposed cleanup action.

The standard point of compliance for direct-contact-based cleanup levels is the upper 15 feet of soil throughout the Site.

**Table 3-1**  
**Cleanup Standard**

Constituent of Concern	Cleanup Level	Point of Compliance
Total PCB Aroclors	1 mg/kg	Standard

### 3.5 Applicable Local, State, and Federal Laws

The MTCA requires that cleanup actions comply with local, state, and federal laws determined to be Applicable or Relevant and Appropriate Requirements (ARARs). Though a cleanup action performed under formal MTCA authorities (e.g., an order or consent decree) is exempt from the procedural requirements of most state and all local environmental laws, the action must comply with the substantive requirements of such laws (RCW 70.105D.090 and WAC 173-340-710). For remediation elements required under the MTCA, some local requirements may be met through substantive equivalency. ARARs include applicable laws; legally applicable requirements that specifically address a hazardous substance, cleanup action, location, or other circumstances at the Site; and relevant or appropriate requirements. In addition, any applicable federal permits must be obtained prior to implementation of the cleanup. Appendix A provides a preliminary list of ARARs that could be applicable to either source control (i.e., building demolition), remediation (i.e., soil removal), or both.

Table 3-2 provides a preliminary list of applicable permits and approvals that may be required under the ARARs for source control and/or remediation. Unless otherwise instructed by the permitting agency, the permits and approvals will be applied for to cover both demolition and cleanup activities to streamline the permitting and review process. Any phasing anticipated for the activities can be included in the application materials to cover multiphased construction as needed.

**Table 3-2**  
**Applicable Permits and Approvals**

Permit or Approval	Agency	Trigger	Notes
SEPA Determination	Ecology	Any proposal that requires an agency decision	SEPA Checklist and supporting materials required to demonstrate compliance with SEPA
Washington State NPDES Construction Stormwater General Permit	Ecology	Earthwork that disturbs one acre or more	Application and notices for coverage
Asbestos and Demolition Notification Approval	NWCAA	Demolition of any structure greater than 120 square feet within NWCAA jurisdiction	Asbestos survey required for application submittal
Demolition Permit	Skagit County	Demolition of any buildings or structures	Signed Demolition Permit application form and site plan required for submittal
Grading Permit	Skagit County	Excavation or fill activities	Signed Grading Permit application form and supporting materials required for submittal

### ***3.5.1 State Environmental Policy Act Determination***

Ecology is the review agency for State Environmental Policy Act (SEPA) compliance. A SEPA Checklist and supporting materials will be completed and submitted to Ecology. It is anticipated that a SEPA Determination of Non-Significance will be issued for the Project. There is a 30-day public notice period associated with the SEPA review process.

### ***3.5.2 Construction Stormwater General Permit***

Ecology is the review agency for the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit (CSGP). The CSGP is required for projects that include clearing, grading, or excavation activities that disturb an area of 1 acre or more and discharge stormwater to surface waters of the state. To obtain this permit, a Notice of Intent form is prepared and submitted electronically to Ecology after a SEPA determination is issued. The review time frame for this permit is approximately 2 months. There is a 30-day public notice timeframe that is initiated after a complete application is determined. Additionally, the application requires publication in a local newspaper.

### ***3.5.3 Asbestos and Demolition Notification Approval***

The Northwest Clean Air Agency (NWCAA) administers the asbestos and demolition notification process in Island, Skagit, and Whatcom counties. An asbestos and demolition notification is required for the demolition of any structure greater than 120 square feet within NWCAA jurisdiction that includes or could include asbestos. The notification process requires an asbestos survey to be completed and submitted with an online application to NWCAA. Applications must be submitted at least 10 days prior to construction (i.e., demolition); there is no review time or public notice associated with this approval.

### ***3.5.4 Demolition and Grading Permits***

Skagit County is the local review agency for both demolition and grading permits. These permits are common development permits that can be reviewed and issued within 1 to 2 months of issuance of a SEPA determination. Application forms and supporting materials can be found and submitted online via the Skagit County Planning and Development Services website. An asbestos survey is required prior to submitting an application for a demolition permit. There is no public notice associated with these permits.

## **3.6 Restoration Time Frame**

Cleanup standards will be met immediately following excavation of the contaminated soils (restoration time frame = 0 years). Performance monitoring will be used to verify that cleanup standards are met upon excavation and demolition of the FWTP structures.

## 4 Implementation of the Cleanup Action

### 4.1 Schedule

An outline of the tentative schedule for implementation of the remedial action activities is given below in Table 4-1.

**Table 4-1**  
**Anticipated Schedule for Implementation of Cleanup Action Activities**

Action	Time Frame
Development of Draft CAP	August 2020
Public Notice Draft CAP and Consent Decree	March 2021
Finalize CAP and Consent Decree	April 2021
Pre-Design Investigation and EDR <sup>1</sup>	2021
Permitting	2021
Implement Source Control, Soil Cleanup, and Compliance Monitoring	2022 to 2023

Notes:

<sup>1</sup> The EDR related to this cleanup action will be developed in parallel and coordination with the demolition design, which includes source control and non-MTCA components.

The soil cleanup action will be performed in coordination with FWTP demolition (i.e., source control) activities. The remedial design process for the soil removal will consist of the following documents, to be submitted and approved by Ecology:

- **Pre-Design Investigation Plan:** This describes additional field sampling that will be performed to verify the delineation of the extent of soils exceeding cleanup standards (i.e., the final removal area). Sampling will be performed prior to demolition work.
- **Draft Engineering Design Report (EDR):** This describes the design criteria for the removal action. Attachments to the Draft EDR will include 90% plans and specifications and a Construction Quality Assurance Plan (CQAP). The CQAP will describe procedures that will be used to verify and document that the design criteria are met during construction (i.e., demolition, soil excavation, and grading), including confirmational and performance monitoring requirements.
- **Final EDR:** This includes 100% plans and specifications based on the results of the Pre-Design Investigation and observations and data collected during the demolition project.

These documents will also describe permit requirements, permit exemptions, and substantive requirements, as well as any other information necessary to secure required permits and approvals. The EDR will be finalized following Ecology approval and the City acquisition of required permits or

approvals. After this effort is complete and Pre-Design Investigation samples have been collected, 100% construction plans and specifications will be prepared.

The design process for the demolition of FWTP structures will occur on a parallel track alongside the design for the soil removal action. Though building demolition is not regulated under the MTCA, numerous regulations, requirements, and approvals are required for demolition to prevent any potential exposure to, or release of, contaminated building material (refer to Section 3.5 and Appendix A).

## **4.2 Compliance Monitoring**

Compliance monitoring will be implemented in accordance with WAC 173-340-410. The MTCA specifies the following three types of monitoring:

- Protection monitoring to confirm that human health and the environment are adequately protected during the construction period of the cleanup action
- Performance monitoring to confirm that the cleanup action has attained cleanup standards and other performance standards
- Confirmation monitoring to confirm the long-term effectiveness of the cleanup action once performance standards have been attained

Under this framework, protection monitoring will consist of procedures and oversight (e.g., observation and record keeping) during construction (i.e., demolition, soil excavation, and grading) to show that human health is protected during construction. Performance monitoring will consist of post-construction sampling to verify that all soil exceeding the cleanup level has been removed. Because all potential sources and all media exceeding Site cleanup standards will be removed from the Site, post-construction sampling will also serve the purpose of confirmation monitoring. No long-term confirmation monitoring will be required. The final details of the compliance monitoring plan will be described in the EDR.

## **4.3 Institutional Controls**

The selected alternative removes all source material and removes material above the Method A:U cleanup level (1 mg/kg). As such, no institutional or engineering controls are required to be in place following cleanup. Following performance and confirmation monitoring, the City will request that Ecology issue a Certificate of Completion and delist the Site.

## **4.4 Public Participation**

Following Ecology review of the Draft Cleanup Action Plan, a Public Review Draft will be distributed for public comment. The comment period will last 30 days, after which comments will be reviewed and addressed.

## 5 References

- Anchor QEA, LLC (Anchor QEA), 2020. *Final Feasibility Study*. Former Anacortes Water Treatment Plant. May 2020.
- DLH (DLH Environmental Consulting), 2015. *City of Anacortes Water Treatment Plant Hazardous Materials Assessment*. Former Anacortes Water Treatment Plant. January 28, 2015.
- Intertox (Intertox, Inc.), 2017. *Evaluation of Potential Human Health Risks Associated with Contamination Identified in Building Materials at the Former Anacortes Water Treatment Plant*. Former Anacortes Water Treatment Plant. March 30, 2017.
- Shannon & Wilson (Shannon & Wilson, Inc.), 2010. *Geotechnical Data Report, Anacortes Water Treatment Plant, Mount Vernon, Washington*. Former Anacortes Water Treatment Plant. September 24, 2010.
- Stantec (Stantec Consulting Services, Inc.), 2019. *Remedial Investigation Report*. Public Review Draft. Former Anacortes Water Treatment Plant. March 11, 2019.

# Appendix A

## Applicable or Relevant and Appropriate Requirements

---

**Appendix A**  
**Applicable or Relevant and Appropriate Requirements**

Authorizing Statute	Criteria	Citation	Description
Clean Water Act/ National Toxics Rule	Federal Ambient Water Quality Criteria	33 USC 1251 40 CFR 131	Requires the establishment of guidelines and standards to control the discharge of pollutants to waters of the United States. Human health criteria contained in the NTR are State Water Criteria under WAC 173-201a.
Federal Clean Air Act	National Ambient Air Quality Standards Ambient Air Quality Monitoring Standards of Performance for New Stationary Sources National Emission Standards for Hazardous Air Pollutants National Emission Standards for Hazardous Air Pollutants for Source Categories	42 USC 7401 42 USC 7671 40 CFR 50 40 CFR 58 40 CFR 60 40 CFR 61 40 CFR 63 40 CFR 82	Establishes air quality standards for protection of human health. Applies to asbestos abatement, pre-demolition activities (associated with recovery of CFCs), and demolition activities.
Washington Clean Air Act	General Regulations for Air Pollution Sources Controls for New Sources for Toxic Air Pollutants Ambient Air Quality Standards for Particulate Matter Emission Standards and Controls for Sources Emitting VOCs	Chapters 70.94 and 43.21A RCW WAC 173-400 WAC 173-460 WAC 173-470 WAC 173-490	Establishes air quality standards for protection of human health. Applies to demolition activities.



**Appendix A**  
**Applicable or Relevant and Appropriate Requirements**

Authorizing Statute	Criteria	Citation	Description
OSHA/Asbestos Worker Protection Rule	OSHA and state standards for handling asbestos-containing materials	40 CFR 763 Subpart G	Worker protection requirements that pertain to the demolition of buildings that contain asbestos.
Washington State Asbestos Laws		WAC 296-62 WAC 296-65 WRD 23.10 WRD 23.25 WRD 23.30 WRD 23.35	
Toxic Substances Control Act	Criteria for the management of PCBs	40 CFR 761	Worker protection requirements that pertain to the demolition of buildings that contain asbestos.
NPDES	Point source discharge of pollutants to surface waters of the United States	40 CFR Parts 122–125	Applicable construction work requires a Washington State NPDES Construction Stormwater General permit to manage stormwater during construction.
Discharge Permit Program		Chapter 90.48 RCW Chapter 173–226 WAC	
State of Washington Water Pollution Control Act	Management of stormwater from construction activities	Chapter 90.48	Regulations for developing stormwater pollution prevention plans and implementing sediment, erosion, and pollution prevention control measures.

**Appendix A**  
**Applicable or Relevant and Appropriate Requirements**

Authorizing Statute	Criteria	Citation	Description
Solid Waste Disposal Act	Regulation of any handling, treatment, or off-site disposal of non-hazardous solid waste	40 CFR 257-258	These regulations establish federal and statewide minimum standards for solid waste management and handling (including beneficial reuse of inert building materials).
Solid Waste Handling Standards		Chapter 173-350 WAC Chapter 70.95 RCW	
RCRA	Generation and transportation of hazardous waste and waste management activities at TSDFs; consideration of off-site land disposal; state equivalent of RCRA requirements for designating certain solid wastes as "dangerous waste"	42 USC 6921-6922 40 CFR Parts 260-263, 268, 273, and 279	Any hazardous and/or dangerous waste transported from the Site must be managed in accordance with these regulations.
Washington Hazardous Waste Management Act		Chapter 173-303 WAC Chapter 70.105 RCW Chapter 173-303	
NEPA	Consideration, evaluation, and analysis of environmental impacts of major proposed actions and definition of appropriate measures for impact mitigation	42 USC Chapter 43.21C	A SEPA checklist is expected to satisfy these requirements. Requirements are the functional equivalent of NEPA. Construction activities associated with implementing a MTCA CAP and demolition activities.
SEPA		Chapter 197-11 WAC	

**Appendix A**  
**Applicable or Relevant and Appropriate Requirements**

Authorizing Statute	Criteria	Citation	Description
OSHA	Governance of worker safety during the cleanup action implementation	29 CFR 1910 and 1926	Compliance is met through preparation and implementation of Site-specific Health and Safety Plan(S) with appropriate controls, worker training and certifications, and occupational monitoring.
WISHA		Chapter 296-62 WAC Chapter 296-65 WAC	
Washington State Water Well Construction Regulations	Regulation of groundwater well construction as part of the cleanup action	Chapter 18.104 RCW Chapter 173-160 WAC	These regulations establish minimum standards for the construction and decommissioning of all wells in the State of Washington.
USDOT/WSDOT	Regulation of transport of hazardous materials	49 CFR Parts 105, 107, and 171-180	These regulations apply if excavated soils and demolition materials need to be transported off site as part of the cleanup action.
Hazardous Materials Transportation Act	Regulation of transport of hazardous materials	49 USC 5101-5128	Transportation of hazardous demolition debris or other hazardous materials.
Endangered Species Act	Effects on listed endangered or threatened species	16 USC 1531 et seq. 50 CFR Part 17	Actions authorized, funded, or carried out by federal agencies may not jeopardize the continued existence of endangered or threatened species or adversely modify or destroy their critical habitats.

## Appendix A

### Applicable or Relevant and Appropriate Requirements

Authorizing Statute	Criteria	Citation	Description
Skagit County, Washington State	County code regulating construction and demolition projects	Title 1–16	These codes apply to aspects of construction, including but not limited to: work hours, noise ordinances, demolition permits, environmental controls, and transportation regulations.
City of Mount Vernon, Washington State	City code regulating construction and demolition projects	Titles 1–19	These codes apply to aspects of construction, including but not limited to: work hours, noise ordinances, demolition permits, environmental controls, and transportation regulations.

#### Notes:

CFC: chlorofluorocarbon  
CFR: Code of Federal Regulations  
MTCA: Model Toxics Control Act  
NEPA: National Environmental Policy Act  
NPDES: National Pollutant Discharge Elimination System  
NTR: National Toxics Rule  
OSHA: Occupational Safety and Health Act/Administration  
SEPA: State Environmental Policy Act  
TSDF: Treatment, Storage, and Disposal Facility  
USC: United States Code  
USDOT: U.S. Department of Transportation  
WISHA: Washington Industrial Safety and Health Act  
WRD: Washington Industrial Safety and Health Act Regional Directives  
WSDOT: Washington State Department of Transportation  
WAC: Washington Administrative Code  
RCW: Revised Code of Washington

# **EXHIBIT C**

## **Scope of Work and Schedule**

## Scope of Work and Schedule

<b>Deliverable/Action</b>	<b>Schedule for Completion</b>
Draft Pre-Design Investigation (PDI) Work Plan	30 days from execution of the Consent Decree
Final PDI Work Plan	30 days following receipt of Ecology comments on the Draft PDI Work Plan
Pre-Design Investigation Sampling	60 calendar days following Ecology approval of the Final PDI Work Plan
Draft Engineering Design Report (EDR) <sup>1</sup>	60 days following receipt of final, validated PDI data
Final Engineering Design Report	30 days following receipt of Ecology comments on the Draft EDR and receipt of any required permits
Complete Source Control (Demolition) and Cleanup Action (Soil Excavation and Disposal)	December 31, 2022

Notes:

<sup>1</sup> The EDR related to the cleanup action will be developed in parallel and coordination with the demolition design, which includes source control and non-MTCA components.

# **EXHIBIT D**

**Ecology Authorized Representatives**  
**Approved for Site Access**  
**With 24 Hours' Notice**

## **Ecology Authorized Representatives Approved For Site Access With 24 Hours' Notice**

The following Ecology authorized representatives may access the Site with 24 hours' notice as set forth in Section IX.4 of the Consent Decree:

Cris Matthews  
Ecology Site Manager  
Washington State Department of Ecology  
Bellingham Field Office  
913 Squalicum Way, #101  
Bellingham, WA 98225  
360-255-4379  
[cris.matthews@ecy.wa.gov](mailto:cris.matthews@ecy.wa.gov)

Ian Fawley  
Community Outreach & Environmental Education Specialist  
Washington State Department of Ecology  
Bellingham Field Office  
913 Squalicum Way, #101  
Bellingham, WA 98225  
360-255-4382  
[ian.fawley@ecy.wa.gov](mailto:ian.fawley@ecy.wa.gov)

The following Director of Public Works and Water Treatment Plant Manager each have the authority to waive the 24 hours' notice requirement as set forth in Section IX.4 of the Consent Decree:

Fred Buckenmeyer  
Director of Public Works  
City of Anacortes Public Works  
P.O. Box 547  
Anacortes, WA 98221  
360-293-1919  
[fredb@cityofanacortes.org](mailto:fredb@cityofanacortes.org)

Brian McDaniel  
Water Treatment Plant Manager  
City of Anacortes Public Works  
14489 Riverbend Road  
Mount Vernon, WA 98273  
306-428-1598  
[brianm@cityofanacortes.org](mailto:brianm@cityofanacortes.org)



# **EXHIBIT E**

## **Applicable Permits**

## Applicable Permits

Permit or Approval	Agency	Trigger	Notes
Asbestos and Demolition Notification Approval	Northwest Clean Air Agency (NWCAA)	Demolition of any structure greater than 120 square feet within NWCAA jurisdiction	An asbestos survey is required for application submittal.
State Environmental Policy Act (SEPA) Determination	Skagit County	Any proposal that requires a local agency decision	A SEPA Checklist and supporting materials are required to demonstrate compliance with SEPA.
Washington State NPDES Construction Stormwater General Permit	Ecology	Earthwork that disturbs one acre or more	Application and notices for coverage
Demolition Permit	Skagit County	Demolition of any buildings or structures	A signed Demolition Permit application form and site plan are required for submittal.
Grading Permit	Skagit County	Excavation or fill activities	A signed Grading Permit application form and supporting materials are required for submittal.

# **EXHIBIT F**

**Applicable or Relevant**  
**And Appropriate Requirements**

## Applicable or Relevant and Appropriate Requirements

Authorizing Statute	Criteria	Citation	Description
Clean Water Act/ National Toxics Rule	Federal Ambient Water Quality Criteria	33 USC 1251 40 CFR 131	Requires the establishment of guidelines and standards to control the discharge of pollutants to waters of the United States. Human health criteria contained in the NTR are State Water Criteria under WAC 173-201a.
Federal Clean Air Act	National Ambient Air Quality Standards Ambient Air Quality Monitoring Standards of Performance for New Stationary Sources National Emission Standards for Hazardous Air Pollutants National Emission Standards for Hazardous Air Pollutants for Source Categories	42 USC 7401 42 USC 7671 40 CFR 50 40 CFR 58 40 CFR 60 40 CFR 61 40 CFR 63 40 CFR 82	Establishes air quality standards for protection of human health. Applies to asbestos abatement, pre-demolition activities (associated with recovery of CFCs), and demolition activities.
Washington Clean Air Act	General Regulations for Air Pollution Sources Controls for New Sources for Toxic Air Pollutants Ambient Air Quality Standards for Particulate Matter Emission Standards and Controls for Sources Emitting VOCs	Chapters 70.94 and 43.21A RCW WAC 173-400 WAC 173-460 WAC 173-470 WAC 173-490	Establishes air quality standards for protection of human health. Applies to demolition activities.
OSHA/Asbestos Worker Protection Rule	OSHA and state standards for handling asbestos-containing materials	40 CFR 763 Subpart G	Worker protection requirements that pertain to the demolition of buildings that contain asbestos.
Washington State Asbestos Laws		WAC 296-62 WAC 296-65 WRD 23.10 WRD 23.25 WRD 23.30 WRD 23.35	
Toxic Substances Control Act	Criteria for the management of PCBs	40 CFR 761	Worker protection requirements that pertain to the demolition of buildings that contain asbestos.

NPDES	Point source discharge of pollutants to surface waters of the United States	40 CFR Parts 122–125	Applicable construction work requires a Washington State NPDES Construction Stormwater General permit to manage stormwater during construction.
Discharge Permit Program		Chapter 90.48 RCWChapter 173-226 WAC	
State of Washington Water Pollution Control Act	Management of stormwater from construction activities	Chapter 90.48	Regulations for developing stormwater pollution prevention plans and implementing sediment, erosion, and pollution prevention control measures.
Solid Waste Disposal Act	Regulation of any handling, treatment, or off-site disposal of non-hazardous solid waste	40 CFR 257–258	These regulations establish federal and statewide minimum standards for solid waste management and handling (including beneficial reuse of inert building materials).
Solid Waste Handling Standards		Chapter 173-350 WAC Chapter 70.95 RCW	
RCRA	Generation and transportation of hazardous waste and waste management activities at TSDFs; consideration of off-site land disposal; state equivalent of RCRA requirements for designating certain solid wastes as “dangerous waste”	42 USC 6921–692240 CFR Parts 260–263, 268, 273, and 279	Any hazardous and/or dangerous waste transported from the Site must be managed in accordance with these regulations.
Washington Hazardous Waste Management Act		Chapter 173-303 WAC Chapter 70.105 RCW Chapter 173-303	
NEPA	Consideration, evaluation, and analysis of environmental impacts of major proposed actions and definition of appropriate measures for impact mitigation	42 USC Chapter 43.21C	A SEPA checklist is expected to satisfy these requirements. Requirements are the functional equivalent of NEPA. Construction activities associated with implementing a MTCA CAP and demolition activities.
SEPA		Chapter 197-11 WAC	
OSHA	Governance of worker safety during the cleanup action implementation	29 CFR 1910 and 1926	Compliance is met through preparation and implementation of Site-specific Health and Safety Plan(S) with appropriate controls, worker training and certifications, and occupational monitoring.
WISHA		Chapter 296-62 WAC Chapter 296-65 WAC	

Washington State Water Well Construction Regulations	Regulation of groundwater well construction as part of the cleanup action	Chapter 18.104 RCW Chapter 173- 160 WAC	These regulations establish minimum standards for the construction and decommissioning of all wells in the State of Washington.
USDOT/WSDOT	Regulation of transport of hazardous materials	49 CFR Parts 105, 107, and 171–180	These regulations apply if excavated soils and demolition materials need to be transported off site as part of the cleanup action.
Hazardous Materials Transportation Act	Regulation of transport of hazardous materials	49 USC 5101– 5128	Transportation of hazardous demolition debris or other hazardous materials.
Endangered Species Act	Effects on listed endangered or threatened species	16 USC 1531 et seq. 50 CFR Part 17	Actions authorized, funded, or carried out by federal agencies may not jeopardize the continued existence of endangered or threatened species or adversely modify or destroy their critical habitats.
Skagit County, Washington State	County code regulating construction and demolition projects	Title 1–16	These codes apply to aspects of construction, including but not limited to: work hours, noise ordinances, demolition permits, environmental controls, and transportation regulations.
City of Mount Vernon, Washington State	City code regulating construction and demolition projects	Titles 1–19	These codes apply to aspects of construction, including but not limited to: work hours, noise ordinances, demolition permits, environmental controls, and transportation regulations.